University of Alberta

Horace and the Justice of Crime and Punishment

by

Michael Norman Aston

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Master of Arts

in

Classics

Department of History and Classics

Edmonton, Alberta

Spring, 1998

National Library of Canada
Acquisitions and Bibliographic Services
395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque nationale du Canada
Acquisitions et services bibliographiques
395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-28886-2

Canada

University of Alberta

Faculty of Graduate Studies and Research

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled *Horace and the Justice of Crime and Punishment* submitted by ***Michael Norman Aston*** in partial fulfillment of the requirements for the degree of Master of Arts in ***Classics***.

John-Paul Himka

Dr. John-Paul Himka (*Committee Chair*)

Dr. Alastair M. Small (*Supervisor*)

Rebecca Nagel

Dr. Rebecca E. Nagel (*Committee Member*)

Dr. Roger A. Shiner (*Committee Member*)

14.01.98

(Date)

Dedication

I dedicate this thesis to the memory of my parents, who encouraged me to pursue my interest in Classics.

I also acknowledge Mr. Perry and Ms. Forrest, former teachers of Greek, Latin and Ancient History at West Bromwich Grammar School, who gave me my first instruction in classical languages and history.

Finally, I dedicate this thesis to the memories of Brandy and Shandy, in part repayment for their lifelong friendship and companionship.

Abstract

Horace's poems reveal a wide interest in the law. The thesis examines one important aspect of that interest, namely, the role of justice as it applies to crime and punishment.

Horace's concept of justice, it is argued, includes all parts of the Roman legal system. First, justice requires a legal framework that involves a moral, virtuous leadership (represented by Octavian / Augustus) and an equally moral-minded judiciary and citizenry. Second, justice requires that practitioners of the law use judgement that is impartial and that attempts to determine guilt and responsibility fairly and justly. Finally, justice requires that punishment is appropriate to the crime.

The portrait that Horace presents is that of a system of justice which, as its first object, maintains order within the Roman state and society. The model that Horace provides is one that draws on various philosophical backgrounds, with links to Epicurean and Stoic beliefs. It is, however, also a distinctly Horatian view of justice, based on Horace's own moral principles.

Acknowledgements

Many people have contributed to the writing of this thesis. I would like first to thank members of the faculty of the Department of History and Classics, as well as fellow students, who have offered valuable advice and encouragement throughout my graduate program. In particular, I acknowledge the kind guidance of Dr. John R. Wilson, who re-awakened my interest in Classical Literature. I also owe a debt to Dr. Rosemary M. Nielsen, who encouraged me to pursue graduate studies and suggested that I write my dissertation on some aspect of Horace and the law.

I would like to acknowledge especially the guidance provided to me by my thesis supervisor, Dr. Alastair M. Small, whose keen interest in my project and probing comments gave me valuable direction as the thesis developed. I also owe a debt of thanks to Dr. Rebecca E. Nagel, co-member of my Supervisory Committee, whose insights into Horace's works and close reading of the text allowed me to bring the work to completion. Any errors, omissions or deficiencies of the thesis are mine alone.

Table of Contents

Chapter		Page
1.	Introduction	1
2.	Horace and the Origins and Components of the Law	17
3.	A Matter of Judgement: Horace, Justice and Crime	55
4.	Horace and the Justice of Punishment	85
5.	Conclusions: Horace and Justice	120
	Bibliography	132

CHAPTER I

INTRODUCTION

What contribution does Horace make to our understanding of justice as a facet of Roman legal thought? As this thesis attempts to show, Horace gives valuable insights into the legal concepts held by a Roman intellectual both in the years between Philippi and Actium and also during the first decades of the Augustan period. In particular, Horace provides a coherent view of his understanding of the meaning of justice. Of special importance is what he has to say about the factors that should be applied when judging crime and those that should be applied in determining punishment. It will be argued that, in Horace's mind, these factors constitute critical elements of justice.

Although commentators have alluded in general terms to his approach to the law and to specific legal topics, very little has been written that considers how Horace viewed justice and its relationship to crime and punishment within the overall framework of the Roman legal system. The position taken in this paper is that the legal themes and motifs related to justice which are found throughout Horace's writings are more than embellishments or a Romanizing element in his poetry. On the contrary, throughout his literary career Horace was deeply interested in law and especially the importance of developing a relationship between justice as a legal concept and underlying concepts of morality: *quid leges sine moribus / vanae proficiunt?* (Odes 3.24, 35-36). The interplay of law and morality, it is argued, formed a major area of thought in his poems and

provided his readers with well-developed insights into the all-important concept of justice.

To examine the concept of justice in Horace's works from a legal point of view presupposes that his writings are in some sense legal documents, and that he has something valuable to say about the law and legal issues. Although commentators acknowledge readily that the law is a significant topos in Horace's poetry, there is less interest in claiming that Horace makes a contribution to an understanding of Roman law. J. Duncan Cloud, for example, in the course of examining legal themes and imagery in the Satires, finds that "a certain number of legal references are there simply to convey an atmosphere of Roman normality."[1] As far as legal material is concerned, he notes: "its function is partly ethical and partly structural."[2] And, while stating that "the range of legal reference in Horace is most impressive," Cloud observes that "nevertheless...we learn nothing new about Roman law from reading Horace. What we do learn is that reference to Roman law enhances the Romanness of the Satires."[3] He concludes that "Horace's use of Roman law is of little value to historians of Roman law,"[4] adding that "Horace is much more concerned with the poetic effect that legal reference can achieve than in fidelity to legal fact."[5]

The Odes do not fare much better among commentators. W. J. Henderson, in an analysis of political and legal imagery in the Odes, finds that "this type of imagery is not central or dominant in Horace's lyric verse."[6] More damning, he observes that legal imagery in particular is "limited in depth and originality."[7]

These assessments are fair, if we expect Horace to write as a Roman lawyer would write. It is certainly true, for example, that Horace provides very little factual information

about the law of Rome that is not known from other sources. Granted, there are many references to legal "facts": we may point to his extensive use of legal terminology,[8] which indicates the legal knowledge not only of the poet but (necessarily) of his readers,[9] mention of Roman statutes, depiction of legal processes and procedures, notes on legal personalities and references to specific legal issues. While very little of this information is new, it must be conceded that Horace sometimes supplies important legal facts (such as biographical details about lawyers with whom he was acquainted or familiar that are not available from any other source).[10] It should be appreciated as well that his legal references are valuable in their own right to the history of Roman law, in that they often confirm information obtained elsewhere. Nevertheless, strictly speaking, Horace yields no legal surprises.

Appraisals of this kind, however, are based on an unnecessarily narrow appreciation of legal writing and are unfair to Horace's contribution to legal thought. Horace was not, as far as we know, a lawyer, i.e. there is no evidence that he received training in the law (beyond that which was provided to all Romans of his means) or attempted to practice law. His poems, whether we are talking about the Satires, Odes, Epodes or Epistles, were not intended to be read as legal tracts or as set pieces that deal with specific legal issues. Nonetheless, he is valued with other writers as an important lay source for legal matters. He was, like Cicero, knowledgeable in the law (although without Cicero's depth of knowledge and his practical experience in the courts), a man interested in the philosophical aspects of subjects such as crime and punishment, justice and the law. Roman (non-juristic) writings by authors such as Cicero, Horace or Ovid contribute a

significant amount of legal material. As Crook comments in his study of the rôle of law in Roman life:

> For reasons connected with the amateurism (until quite late in its history) of Roman public life—whereby the standard education included forensic rhetoric, and the law was run by members of a financially independent upper class in the interstices of pursuing political careers or just managing their estates, so that the talkers of law were also the readers and quite often the writers of literature—for such reasons, legal talk and terminology seem rather more frequent and more at home in Roman literature than in ours. Legal terms of art [sic] could be used for literary metaphor, could be the foundation of stage jokes or furnish analogy in philosophical discussion. And a corollary of this is that many a passage of Latin *belles lettres* needs a knowledge of the law for its comprehension.[11]

Crook continues by pointing out the important rôle played by Horace's works (although we would add that the Odes and Epodes, as well as the Satires and Epistles, are also a valuable source of legal information):

> Of the Latin poets it is naturally the satirists, closest to everyday life, who abound most fruitfully in legal evidence—Horace in his Satires and Epistles, Persius, Martial, Juvenal...[12]

The presence of 'legal evidence' in Horace's works, however, does not mean that we should search through them for analyses of statute law or details of case law. Cicero, who is one of our major literary sources of Roman law, was well aware of the problem: the importance of his writings about legal subjects, he writes, is not tied to legal analysis, such as consideration of the provisions of the Twelve Tables. His writings, he notes in the De Legibus, are far more relevant for what he says about the philosophy of the law and the underlying principles on which it is based:

> *Non ergo a praetoris edicto, ut plerique nunc, neque a duodecim tabulis, ut superiores, sed penitus ex intima philosophia hauriendam iuris disciplinam putas?*

> *Non enim id quaerimus hoc sermone, Pomponi, quem ad modum caveamus in iure aut quid de quaque consultatione respondeamus. Sit ista res magna...sed nobis ita conplectanda in hac disputatione tota causa est universi iuris ac legum, ut hoc civile, quod dicimus, in parvum quendam et angustum locum concludatur. Natura enim iuris explicanda nobis est eaque ab hominis repetenda natura, considerandae leges, quibus civitates regi debeant, tum haec tractanda, quae conposita sunt et descrita iura et iussa populorum, in quibus ne nostri quidem populi latebunt quae vocantur iura civilia.*
>
> (De Legibus 1.17)

Cicero's comments could be those of Horace. Like Cicero, he is interested in conceptualizing the law and its application to Roman life and morality. But, unlike Cicero, who drew on the courts, prose and poetry to express his views, he chose to concentrate his attention (as far as we know) on expressing his thoughts through the medium of poetry. His poems spoke to an audience that included members of Octavian/Augustus' intimate circle and an audience that had in its ranks men (like Maecenas) who had the power to influence the development of legal policy.

Horace's thoughts on justice and law address a subject that enjoyed a long development in literary and philosophical writings in both Greece and Rome. It is impossible to examine his work without finding the influence of his predecessors intermingled with his own ideas. Some brief account of this tradition, therefore, is appropriate, in order to provide a general context and background. The earliest extant references to law and justice in Classical writings are found in a literary context in Homer. Some examples: emblazoned on the shield of Achilles is, as Gagarin observes, "the clearest and strongest evidence for the existence of a formal, public legal procedure in preliterate Greece,"[13] namely, a scene in which two litigants plead their cases in front of a

group of elders who deliver their verdicts (Iliad 18.497-508). Later in the work, in the argument over the outcome of a chariot race (Iliad 23.287-623), Homer presents us with our earliest extant example of a dispute mechanism in action, of claim and counter-claim and argument.

These, and other passages in both the Iliad and the Odyssey, are literary allusions to justice. For views of justice in a philosophical, political context, Hesiod provides several accounts, both in the Works and Days (especially 11.213-85) and the Theogony (77-103). In the early period of unwritten law described by Homer and Hesiod,[14] justice (*dikê*)--as we find it referenced, for example, in the Iliad-- "is a procedure," Havelock notes, "not a principle or any set of principles. It is arrived at by a process of negotiation between contending parties carried out rhetorically."[15] Further, Havelock continues, justice in Homer (*dikê*, not the modern concept of justice);

> symbolizes what one has a 'right' to expect, what it is 'just' to expect of given persons in given situations. The expectation, in order to be 'just', must fit with the kind of behaviour that pragmatic common sense would view as normal in specific cases, and therefore as normative, in the sense that the crazy-quilt variety of behaviour patterns adds up to a total for the society which is socially cohesive and 'works'.[16]

Although Hesiod adds the concept of power to justice (Justice personified sits next to Zeus, Works and Days, 11.256-260), the early concepts of what is 'right' or 'just' are based primarily on procedure and general notions of fairness. Later, *dikê* became connected with crime and its punishment (e.g. the reciprocal balancing of injustices in Aeschylus—a death for a death, murder for murder) and especially with a growing emphasis on legal process. The evidence for written law begins in the seventh century.

By the time of Herodotus, the focus of justice "tends to narrow down to identifying the penalty or punishment inflicted as the result of process."[17]

In later stages of its development, the approach to justice became more than identifying what seemed 'right' or 'just' by looking at external circumstances and facts. It also became important to consider the inner dimensions of justice, i.e. *dikaiosunê* (a term that appears for the first time in Herodotus). Havelock points to the emergence of justice as an inner concept in Herodotus' treatment of Deioces (Histories 1.95f.):

> If there is a hint of difference [from *dikê*], it lies in the verb to which *dikaiosunê* is attached as object. It is something upon which Deioces "concentrated himself" and which he "practiced." The first expression would be appropriate to an activity personally undertaken, and the second to something which, in the language of the late fifth and fourth centuries, would be a "virtue" (*aretê*) which a man cultivated in himself. That is to say, the hint points toward a tendency to think of the justice implemented in due process as requiring also a 'justice' which is an ethos in the individual who is to implement it. It marks a step toward the 'internalization of the concept'.[18]

This 'internalization of the concept', as will be seen later, is a focal point in Horace's understanding of justice. The external 'facts', in his view, are only part of the story; Horace would have us consider such things as [i] the motives and state of mind of a 'criminal'; [ii] the 'appearance' of a criminal act; and [iii] the state of mind of the person who judges an alleged crime. How much Horace knew about the development of Greek law is difficult to estimate. We do know that he was very familiar with Greek literature (and was proud of using Greek models for his own poetry) and with Greek philosophers of the major schools of Epicureanism, Stoicism and Aristotelianism.[19]

The pattern of development of justice and law in ancient Rome is similar in many respects to that of the Greek world.[20] In early Rome, one historian notes;

> social life was regulated by a series of norms, the *mores maiorum*, which the Romans had inherited from their ancestors. Some of these norms were regarded as being of human origin, some as of divine origin...[21]

The divine 'norms' were associated with what was acceptable to the gods (*fas* and its opposite, *nefas*); and the norms of social consensus were associated with *ius* (and its opposite, *iniuria*). During the monarchical period and the early Republic there was a close relationship between the religious and secular aspects of the law. At first, both kinds of law were the province of the king. In the Republic, responsibility for both was initially under the control of the *pontifices*,[22] and, until the middle of the fourth century, the College of Pontiffs retained control over interpretation of the law. After this time, and specifically after the introduction of the praetorship (367 B.C.), the rôle of the praetor, who had control of the courts, became a major agent in the development of the law. Watson notes that:

> the praetorian Edict was the great factor in legal change. Each Edict was effective only so long as the proposing magistrate remained in office, which was for a year only. But it was very much the case that a praetor would retain the bulk of his predecessor's Edict, making only such changes as he saw fit. Thus, the Edict made for stability of the law while allowing changes to be made easily.[23]

In the middle of the fifth century the existing Roman rules (with the help of study of Greek legal codes) were codified in the Laws of the Twelve Tables. The Twelve Tables were, according to Livy (Ab Urbe Condita 3.34.6), "the source of all public and civil law." Properly, however, the Tables for the most part deal only with civil law: the

other two main branches of the law, including sacral (laws concerning the state religion) and public law (laws regarding offences against the state, as well as criminal law), are wanting.[24] Horace's poems touch on all three areas of the law.

As in Greece, disputes among Romans prior to the codification of the law (the Laws of the Twelve Tables, c.451-450 B.C.) were resolved by negotiation. The procedures used in negotiation eventually became rigid processes that characterize the early development of Roman law:

> ...archaic law—like the law of nearly all primitive peoples—was of a formalistic nature. To ensure that a certain transaction would have the desired result, it always had to be performed in accordance with meticulously detailed rituals, e.g. certain words had to be used or certain gestures had to be made. This formalism applied to transactions in both the sacral and the juridical field, and in the latter it applied to both legal transactions and civil procedure.[25]

At first the actions that could be brought to court were limited and constrained by the formalistic approach to the law (a system that restricted legal actions to just five kinds, G.4.12).[26] Later, however, thanks largely to the praetor's *ius edicendi*, the scope of the law was expanded, through the use of the "formula." The formula, drawn up in the first stage of a lawsuit by a judge, in conjunction with the plaintiff and defendant, is a unique feature of Roman law.[27] It set out the details of what was to be considered and the penalties or actions that would apply based on the findings of the case. The resulting formula for an action became the subject of the second part of the lawsuit, i.e. the trial *apud iudicem*. It was during this part of the proceedings that plaintiff and defendant argued their case, using witnesses, evidence and whatever powers of persuasion they could.

For much of the history of the Republic, the presentation of a case, with its arguments and analysis of legal principles, remained in the hands of the litigants, perhaps with the help of those who knew the law. In time, pleaders skilled in speaking and the presentation of arguments assumed a greater rôle, particularly in important public or political trials. This was the arena of forensic orators, such as Cicero. Increasingly, however, the courts became the workplace of legally trained lawyers and less the province of orators such as Cicero.[28] When Horace began to write his Satires and Epodes, in the years following Philippi, law was chiefly the work of skilled, professional lawyers.

The development of the law from an unwritten social understanding of what is 'right' or 'just', implemented by procedure, to a codified system (i.e. written laws) interpreted by a system of judges, was accompanied by a variety of concepts as to the nature of justice. Two broad strands leave their imprint on Horace. On the one hand are the ideas of Epicurus and his adherents (including Lucretius), ideas that promote the law as a tool of convenience and social control. On the other hand are the legal concepts of the Stoics, who saw justice and the law as the fine products of reason. And, since reason was something given to man by Jupiter, law and justice were related through reason to divine origins. Intertwined with these strands are traces of Platonic concepts,[29] such as Plato's emphasis on the need for a strong (ideally sage) ruler,[30] and, especially, his view that justice is internal, related to virtue, goodness and self-control.[31] The mixing of these concepts plays an important part in Horace's thoughts on law and justice.

Horace is novel in his approach to law and justice, in that he draws freely on both Epicurean and Stoic ideas.[32] From the Epicureans he freely adopted the value and

importance of law as a means of promoting social stability and order. With the Stoics he saw law as something given by the gods to men through reason. But his poems show that he went further than both in arguing for personal responsibility and personal morality to complement the legal system.

Horace's interest in law and justice is visible throughout his works, from the earliest poems of the Satires to the last poem of Odes Book 4. Much of the research to date has focused on particular areas of the law, such as studies of Horace and the laws of libel, or on specific, narrow points of law, or on Horace's use of legal language and style.[33] For the purposes of this thesis it will be necessary to omit consideration of these topics and limit our scope to examination of Horace's thoughts on the philosophy of law and justice. We will, therefore, include reference to specialized topics, such as testamentary law (which forms one of Horace's favourite topics), building and property law, libel, etc., only as they pertain to our central theme. Due to the broad nature of our study, we will consider the entire corpus of Horace's writings. However, emphasis will be given to some poems, such as Satires 1.3 (the origins of law; the Stoic approach to crime rebuffed), 2.1 (a consultation with the great lawyer Trebatius), 2.2 (how to create level methods of comparison), and 2.3 (madness and crime), because of their relevance to methods of judging crime. Other poems will receive attention because of what they have to say about the context and authority for law (Epistles 2.1, for example, for the guardianship of Augustus, as well as numerous passages in the Odes that deal with the need for stability in the Roman state and the rôle of Augustus).

The emphasis throughout our account will be to focus on passages in Horace that are specific to the topic of law and justice in terms of language or theme. Occasionally this will require us to revisit poems that are normally considered for their political content (e.g. the Roman Odes) and examine them afresh from a legal point of view. Occasionally we will consider poems that, on the face of it, have little to do with law (e.g. Satires 2.2), but which, by analogy, reveal legally applicable principles (such as equity, *aequitas*).

Although references to the themes of justice, crime and punishment are found in poems from all periods of Horace's life, no attempt is made to trace, in detail, a historical development in Horace's approach. The evidence at any point in the skein is too thin to analyze, unless we expand the study beyond the narrow parameters that have been selected, i.e. passages that have a legal context or flavouring. It remains, therefore, for some further study to employ a synchronic or latitudinal approach, that ties the findings of this analysis to discussion of Horace's poetic response to developments in the history of Roman law. For present purposes, however, the chronology of Horace's poems has been largely set aside.

The study begins, in chapter 2, with an examination of the contextual framework of Horace's approach to the law. This includes, first, consideration of his thoughts on the origin of the law, and the relationship of those thoughts to the main philosophical ideas of the Epicureans and Stoics. Second, we will examine his concept of the hierarchy of legal authority underlying the law, a structural approach to legal legitimacy that begins with the gods and extends through Octavian/Augustus to individual members of Roman society.

In chapter 3 we will begin our analysis of justice by considering Horace's approach to the judgement of "crime". Our study concentrates first on various categories of crime and criminality found in Horace's works. We will then consider the methods suggested by Horace for judging and determining an individual's guilt or responsibility for a criminal act.

In chapter 4 we examine Horace's thoughts on the relationship between crime and punishment. The emphasis in this chapter is on principles that can or should be used by a judge in evaluating degrees of criminality and in determining corresponding degrees of punishment. In chapter 5 we will offer a summary that characterizes Horace's thinking on the subject of justice as it relates to Roman law and society.

---

[1] J. Duncan Cloud, "Satirists and the Law" (in: Satire and Society in Ancient Rome, ed. by S. H. Braund, [Exeter], University of Exeter, 1989), p. 63.
[2] Cloud, p. 64.
[3] Cloud, p. 64 and 65.
[4] Cloud, p. 64.
[5] Cloud, p. 65.
[6] W. J. Henderson, "Political and Legal Imagery in Horace's Odes" (in: Pro Munere Grates; Studies Presented to H. L. Gonin, ed. by D. M. Kriel, Pretoria, University of Pretoria, 1971), p. 73.
[7] Henderson, p. 81.
[8] Kenney, in his study of Ovid and the law, provides a rough count of selected terms pertaining to the law that appear in the works of various Augustan poets, including Horace. By this count, Horace falls far beneath Ovid in the frequency of basic legal terms (such as ***lex***, ***iudicium***, etc.). However, Kenney considers only Horace's Odes, an area of his work where legal terms are not prominent. See: E. J. Kenney, "Ovid and the Law," (Yale Classical Studies, 21, 1969, pp. 243-263). Henderson considers legal terms (see p. 82f.) such as ***lex***, ***testis***, etc.
[9] See, for example, the legal terms used in Epistles 2.2.1-25, to Florus, as identified by Ross S. Kilpatrick, The Poetry of Criticism (Edmonton, University of Alberta Press, c1990), p. 16f.
[10] We may note Horace's references (Satires 1.3.130-2) to P. Alfenus Varus, a pupil of Servius Sulpicius Rufus (a leading jurist of the late Republic), and to the non-Servian

lawyer C. Trebatius Testa, who is consulted by the poet on the subject of how to write poetry without garnering the displeasure of others. For a description of Horace's treatment, see Richard A. Bauman, Lawyers in Roman Transitional Politics (Munich, Beck, 1985), pp. 89-91 and pp. 130-3.

[11] John Crook, Law and Life of Rome (Ithaca, Cornell University Press, 1967), p. 8.

[12] Crook, p. 18.

[13] Michael Gagarin, Early Greek Law (Berkeley, University of California Press, c1986), p. 26. For Gagarin's study of the shield, see pp. 26-33. See also Douglas M. MacDowell, The Law in Classical Athens (Ithaca, Cornell University Press, c1978), pp. 18-21; and O. Andersen, "Some Thoughts on the Shield of Achilles," Symbolae Osloenses 51(1976), pp. 5-18.

[14] For a history of the development of law and justice in archaic and early Greece, see Michael Gagarin.

[15] Eric A. Havelock, The Greek Concept of Justice (Cambridge, Harvard University Press, 1978), p. 137.

[16] Havelock, p. 183.

[17] Havelock, p. 297.

[18] Havelock, p. 298.

[19] For the Greek influences in Horace, see, for example, Giorgio Pasquali, Orazio Lirico (Firenze, Monnier, 1966), pp. 141-641 (philosophy, pp. 620-641); Gordon Williams, The Nature of Roman Poetry (Oxford, Oxford University Press, 1983), pp. 55-70; and C. O. Brink, Horace on Poetry: Prolegomena to the Literary Epistles (Cambridge, Cambridge University Press, 1963). For Horace and Alexandrianism, see Steele Commager, The Odes of Horace: A Critical Study (Bloomington, Indiana University Press, 1967), pp. 31-41.

[20] For brief historical accounts of the development of Roman law, see O. F. Robinson, The Sources of Roman Law (London, Routledge, 1997), and Olga Tellegen-Couperus, A Short History of Roman Law (New York, Routledge, 1993).

[21] Tellegen-Couperus, p. 17.

[22] Tellegen-Couperus, p. 18.

[23] Alan Watson, pp. 77f.

[24] Alan Watson, The Spirit of Roman Law (Athens, University of Georgia Press, c1995), p. 38.

[25] Tellegen-Couperus, p. 18.

[26] The five *legis actiones* were: *actio sacramenti* (an action by wager), *actio per iudicis postulationem* (an action demanding a *iudex*), *actio per condictionem* (an action by formal notice), *actio per manus iniectionem* (an action by laying on of hands), and the *actio per pignoris captionem* (by pledge). See Wm. A. Hunter, A Systematic and Historical Exposition of the Roman Law (Holmes Beach, Fla., Gaunt, 1994. Reprint of 1876 ed.), pp. 811-818).

[27] See Hunter, pp. 818-835.

[28] Fritz Schulz, History of Roman Legal Science (Oxford, Clarendon Press, 1967), p. 49, observes that the great jurisconsults came to court only for important occasions. Even the great lawyers were more involved in activities such as drafting contracts and wills: "In Cicero's time, however, the routine of advising the ordinary public, especially the small man, had passed into the hands of minor jurisconsults and subordinate scribes. The great *iurisconsulti* came into action only on behalf of their friends or of exalted personages, or when an unusually knotty point arose."

[29] Horace notes that Plato was one of his favourite authors: *quorsum pertinuit stipare Platona Menandro, / Eupolin, Archilochum, comites educere tantos?* (Satires 2.3.11-12). However, it is not certain that Horace is referring to the philosopher. He may be referring to a poet of Middle Attic Comedy.

[30] However, other Platonic ideas about law and justice were less attractive. Plato's theoretical, ideal, justice has little in common with the notion of justice as fairness or equity. Bertrand Russell gives us a capsule description: "The definition of 'justice', which is the nominal goal of the whole discussion, is reached in Book IV. It consists, we are told, in everybody doing his own work and not being a busybody: the city is *just* when trader, auxiliary, and guardian, each does his own job without interfering with that of other classes...That everybody should mind his own business is no doubt an admirable precept, but it hardly corresponds to what a modern would naturally call 'justice'...under the influence of democratic theory, we have come to associate justice with equality, while for Plato it has no such implication. 'Justice', in the sense in which it is almost synonymous with 'law'—as when we speak of 'courts of justice'—is concerned mainly with property rights, which have nothing to do with equality. The first suggested definition of 'justice', at the beginning of the *Republic*, is that it consists in paying debts. This definition is soon abandoned as inadequate, but something of it remains at the end." (A History of Western Philosophy, London, Unwin, 1984, pp. 129-130). See also Richard D. Parry, Plato's Craft of Justice (Albany, State University of New York, c1996).

[31] J. Walter Jones writes of Plato's notion of justice: "as used by Plato, justice represents such a balance of influences within a man's soul as makes for goodness; it becomes roughly synonymous with self-control or temperance, embracing all with which a man of virtue can be concerned, and possession of such practical good sense or prudence as is indispensable for the smooth working of any organized complex of relationships, whether the individual human personality, the family or the city." (The Law and Legal Theory of the Greeks. Oxford, Clarendon, 1956, p. 3). As we will see, Horace shared Plato's emphasis on the true importance of individual responsibility and self-control in ensuring the workings of a legal system.

[32] A. L. Motto, "Stoic Elements in the Satires of Horace" (in: Classical, Mediaeval and Renaissance Studies in Honour of B. L. Ullman. Ed. by C. Henderson. Rome, 1964), p. 134.

[33] See, for example, Frances Muecke, "Law, Rhetoric, and Genre in Horace, Satires 2.1" (in: Homage to Horace: A Bimillenary Celebration. Ed. by S. J. Harrison. Oxford, Clarendon, 1995, pp. 203-218), and Robert H. Brophy, "*Emancipatus Feminae*: A Legal

Metaphor in Horace and Plautus" (Transactions of the American Philological Association 105[1975], pp. 1-11).

CHAPTER 2

HORACE AND THE ORIGINS AND COMPONENTS OF THE LAW

Justice, as a concept in law, is dependent upon the legal context of a given society, that is, on its social structure, societal beliefs, specific legal rules (i.e. "laws"), the administrative machinery needed to implement a legal system as well as the underlying forces that lend it authority. In this chapter, then, we will begin our appraisal of Horace's understanding of justice by considering how he viewed the larger structures and organization of Roman law.

[a] The Origins of the Law

Some preliminaries. We may describe the "law" as a set of codified, systematized provisions (whether oral or written) that, as a whole, represent a society's view of its needs for order.[1] This description (intentionally not a definition) avoids the difficult question as to what is the law. The question was considered by Cicero, who took an expansive view that in scope included (at one end of the scale) formal legal instruments (e.g. *leges*), resolutions of the Senate (*senatus consulta*), precedent cases, opinions of jurisconsults, and (at the other end) customs:

> *...ut si quis ius civile dicat id esse quod in legibus, senatus consultis, rebus iudicatis, iuris peritorum auctoritate, edictis magistratuum, more, aequitate consistat.*[2]

Cicero's description presents a continuum of legal sources that are distinguished only in form and formality. At one end we have the hard, provision-laden instruments of statute

law and, at the other, non-statutory factors such as social values, morality and the concept of equity. In later centuries the description of law was tightened, and a line drawn between the formal elements and the broader aspects of morals. By the middle of the second century A.D., for example, custom and equity (as well as magisterial edicts) were no longer considered part of law *qua* law.[3] The difference between formal and informal features of a legal system was, of course, long recognized by Greek and Roman philosophers. Drawing the line between formal elements of the law and social mores was appreciated by Aristotle, for example, for in examining moral virtue he distinguished "between "legal action" ("performing just actions") and moral action ("acting justly")."[4] Horace was close to Aristotle and Cicero in that he, too, drew a line between law and virtue. He was, as we shall see later, aware of the difference between legal and moral actions, while seeing them as part of the same continuum, with law at one end of the continuum and morality at the other.

Depending on point of view, the laws that respond to social needs may be seen as either negative (i.e. prohibiting, preventing, certain actions or behaviours) or positive (in that they promote desirable outcomes, such as justice, fairness, social peace, the attainment of social goods). As we have noted, beyond the "law", as a formal set of rules, are the less formal customs (*mos, mores*), traditions and social values that (ideally) complement and buttress it. But where, in Horace's view, did the "law" (and he is thinking specifically of Roman law) come from? And when and how was it formalized?

As a general statement, we can say that throughout his life Horace regarded the law as a system that was based primarily on the principles of prevention and prohibition,

i.e. as a tool of social force. Possible explanations are not hard to find. First, Roman society during the Republic, because of its (legally available) use of self-help (i.e. *vis*, force) to solve personal or group problems, was often subject to violence, both in the individual's use of force to gain his ends and in the mobs and gangs on the streets of Rome. Towards the end of the Republic, violence was a steadily increasing feature of social and political life. Lintott states:

> ...during the late Republic violence was used to force measures through an assembly, to influence the outcome of an election or trial, and to intimidate or even kill political opponents. Although a number of constitutional means were devised to check it and nullify its effects, these were not proof against persistent violence on a large scale...The Romans of the Republic seem genuinely to have considered it an essential constituent of *libertas* that a man should be allowed to use force in his personal interest to secure what he believed to be his due. So, when a conflict could not be resolved constitutionally, it was not surprising that the frustrated party employed violence, and this in turn frequently could not be countered except by further partisan violence. This vicious circle continued until the military force which was finally summoned to break it moved the conflict to the higher plane of civil war.[5]

As a participant in the Civil War, on the losing side, Horace witnessed at first hand the ultimate disintegration of the Roman state, its descent into chaos, the abominable crimes of fratricide as Roman fought Roman and the excesses of lawlessness that accompany war. He was only too aware of the breakdown of Roman social consensus that climaxed in the Republican defeat at Philippi (42 B.C.) and led to the emergence of a new regime centred around the persons of Octavian, Anthony and Lepidus. This uneasy triumvirate lasted until Anthony was defeated at Actium in 31 B.C. Octavian, now Caesar Augustus by the will of the Assembly and Senate (27 B.C.), assumed the power of an absolute monarch. This period of political turmoil, from Philippi to Actium, left its mark on Horace, and

especially in his growing emphasis on the stability of Rome under a strong regime of law and order. The theme of disorder and anarchy is notably subdued in Horace's Satires and Epodes,[6] during the period 41-27 B.C., but pursues him into the Odes. Seager notes that: "only a handful of the more important Odes, in terms of their political content, deal solely or primarily with matters of domestic policy",[7] but those that do underscore the dangers of the Roman state. Best known of these, perhaps, is the Ode to the "Ship of State" (Odes 1.14). Seager observes that "the most obvious of the allegorical themes is the fear that Rome will be plunged into the turmoil of renewed civil war before she has had time to recover politically, economically and demographically from the ravages of the recent conflict."[8] In Odes 1.35.33-40, for example, he calls to mind the crimes of his generation:

> *eheu, cicatricum et sceleris pudet*
> *fratrumque. Quid nos dura refugimus*
> *aetas? quid intactum nefasti*
> *liquimus? unde manum iuventus*
>
> *metu deorum continuit? quibus*
> *pepercit aris? o utinam nova*
> *incude diffingas retusum in*
> *Massagetas Arabasque ferrum!*

But more than anything, he is disturbed by the thought of renewed civil war, that is, renewed fratricidal divisiveness of the Roman state that began with the death of Remus (who did not deserve it—*immerentis...Remi*, Epodes 7.19)[9] and culminated in the death of Anthony. Fratricide (*scelusque fraternae necis*, Epodes 7.18) is something that even wolves and lions do not do: *neque hic lupus mos nec fuit leonibus, / umquam nisi in dispar feris* (Epodes 7.11f.). It is not a question of right versus wrong, but of Roman against Roman. As Mankin comments, Horace rarely:

> assigns blame for the civil wars to one side or the other. What matters is the death of citizens and the fact that such strife benefits nobody except Rome's external enemies.[10]

An overall purpose of the law, then, in Horace's opinion, is to prevent undesirable social outcomes, i.e. "crimes" (such as fratricide). The importance Horace attached to the subject of law as order is reflected in one of his earliest poems, Satires 1.3, in which he gives us what is almost a programmatic introduction to his thoughts on the philosophy of law. Having started with discussion of personal faults (*vitia*), Horace slowly builds his theme to the larger issues of crime and punishment. "Crime", in a legal sense (Roman as well as modern), is a violation or infringement of some law or other legally based provision. Horace, echoing the thought of Greek and Roman philosophers who preceded him, was well aware that "crime" or "criminal" acts do not exist in Nature,[11] and that crime is something constructed and defined by man. Nature, he observes, does not hold any distinction between "good" and "bad": *nec Natura potest iusto secernere iniquum* (Satires 1.3.113).[12] The observation is ambiguous. Horace leaves it to the reader to interpret whether he means that [a] there is an objectively determinable standard of right and wrong (that Nature ignores as unnecessary for its purposes), or, that [b] Nature has no need to develop a system which views some behaviours as "bad" and others as "good", or that [c] Nature is incapable of distinguishing good from bad. Whatever the case (and probably [c] is what he has in mind), Horace posits that man's early historical development proceeded according to the workings of Nature, i.e. without any definition of right and wrong, and, in consequence, without any knowledge of crime.

At some point (Horace does not specify when or how) man's "natural" order of existence was no longer sufficient.[13] Not at first, however. During the golden age of man (before towns or cities were founded), man lived a simple life.[14] But then came a time of brutality. Brute force, rape, and the domination of the strongest were brought to an end by two things. First, man developed language, i.e. the ability to verbalize thoughts and feelings (*verba, quibus voces sensusque notarent, / nominaque invenere* [Satires 1.3.103f.]). How, specifically, language contributed to change Horace leaves unsaid.[15] Second, man developed communal, social organizations and institutions, such as towns. This concentration of power and administration in towns made it more feasible to institute laws that prohibited theft, murder and adultery (i.e. some of the crimes associated with criminal and civil law):[16]

> *cum prorepserunt primis animalia terris,*
> *mutum et turpe pecus, glandem atque cubilia propter*
> *unguibus et pugnis, dein fustibus, atque ita porro*
> *pugnabant armis, quae post fabricaverat usus,*
> *donec verba, quibus voces sensusque notarent,*
> *nominaque invenere; dehinc absistere bello,*
> *oppida coeperunt munire et ponere leges,*
> *ne quis fur esset, neu latro, neu quis adulter.*
>
> (Satires 1.3.99-106)

This progress of humanity from fighting with sticks and fists to an organized, "civilized" society, as Horace presents it, has features that are reminiscent of the Epicurean viewpoint [17]on the origins of law (and is comparable in many respects to that outlined by

Lucretius[18] and also by Cicero in the De Officiis 2.4).[19] The thought is also Aristotle's, although the emphasis is different:

> For Aristotle human beings are naturally determined with respect to the community of the polis, because in contrast to animals they are endowed with language. Animals also have sensations of pleasurable and painful things; only beings endowed with language, however, can be concerned with justice (Pol. 1.2.1253a12). This path is closed to Epicurus due to his canonic: language does not reveal any genuinely new realm of reality beyond perception.[20]

Horace's view poses practical problems that are left unanswered by the text. For example, how does a society that is without rules of behaviour (at least, legal rules) establish an organized community based on law? Or, how are the strong prevailed upon to cede their social dominance to something that may not be in their self-interest? How does the formation of cities aid in the emergence of law? This kind of development towards a legally structured city implies the use of force under a central control (a king, a ruler) that can both institute and then maintain the rules and also back them up with sanctions or other punishments. Further, how could such organization occur without political involvement, something that the Epicurean avoided?

Horace's abbreviated version of an Epicurean view of social development invites some observations:

[i] *The emergence of law is without any reference to divine intervention.*

As we will see later, Horace has a rôle for the gods in establishing the overall legal authority (*imperium*) of Octavian/Augustus. In this passage of Satires 1.3, however, the agents of work on the law are assumed to be the common people, who co-operate to

establish rules from a structural consensus perspective, i.e. from consensus based on shared values and a preferred way of living.

Lucretius (as we might expect from one who disavows any divine participation in the world) also omits divine involvement.[21] One commentator notes that Lucretius does not want "to emphasize the view that the gods and religion help the establishment and perpetuation of good laws in stable society."[22] This is in keeping with Lucretius' attempt to dissuade those who believed that their city laws were of divine origin.[23] But it is not the common people who determine what the law should be, but a group of men who taught that officials should be elected and who also drew up a code of laws:

> *inde magistratum partim docuere creare*
> *iuraque constituere, ut vellent legibus uti.*[24]

[ii] *Man by nature has the capacity for violence, but also for law and order.* Both Lucretius and Horace imply a duality in man for good and evil. Man commits crimes, but is also able to develop laws that control crime. Law does not end crime, it exists because of it. For the Epicurean, law came into being to remind man of what he already knows and had made customary (*mos*). It applies for the most part, then, to those who have "forgotten" their responsibilities. Alberti notes:

> The law intervened at a later stage in order to make that rule [sc. of not committing murder] stable and obligatory: to impose it by the threat of punishment on those who, because of their personal inability to regulate their own actions on the basis of the 'rational calculation of utility', did not hold to it; and to make more conscious and constant the conduct of those who held to the rule only inattentively, or through a sort of 'irrational perception', and who 'often forgot it'.[25]

Horace assumes that man has a permanent capacity for crime (or "sin" against the gods). The figures of mythology often did what was forbidden (in Odes 1.3, for example, Iapetus stole fire from heaven, *audax Iapeti genus / ignem fraude mala gentibus intulit*, vv. 27f., and Daedalus attempted flight on forbidden wings, *pennis non homini datis*, v. 35). In consequence Jupiter was unable to set aside his thunderbolts (i.e. punishment):

> *nil mortalibus ardui est;*
> *caelum ipsum petimus stultitia neque*
> *per nostrum patimur scelus*
> *iracunda Iovem ponere fulmina.*
>
> (vv. 37-40)

The development of the law, Horace tells us, is a response to man's brutalities. It is also permanent, in that man's propensity for good and bad is permanent (because this is the way Nature has made him): in the same way that Jupiter must always be available to punish wrongdoers who try to invade the prerogatives of the gods, so the law must be available to protect society. But there is more, in that the law responds not only to the violence of man but to the idea that violence can be an injustice, i.e. that violence produces an unjust result. This brings us to our next observation, namely, that it was the fear of injustice that also prompted the emergence of the law.

[iii] *Law (i.e. justice) developed from fear of injustice.*

Horace grounded his opinion that law and justice developed from fear of the consequences of injustice on the examples of history:

> *iura inventa metu iniusti fateare necesse est,*

tempora si fastosque velis evolvere mundi.

(Satires 1.3.111-112)

Fear of "injustice" (*iniuria*) is fear of a special kind of harm, that is, a harm that should not be, according to some standard of what constitutes right and wrong, good and bad. It is harm that is the opposite of what is right (i.e. *iustus*). Horace's statement differs from that of a pragmatic Epicurean, such as Lucretius, for whom law is a convenience that bars any kind of damage to the individual (whether just or unjust).[26]

Law, then, is man-made (not divine) and serves to protect the community. However, Horace indicates that law is not neutral, i.e. it does not merely keep people from damaging each other, but it is also there to protect them against actions that are unjust. We will conclude our observations at this point by considering whether Horace placed a positive or negative value on law.

[iv] *Law is neither good nor bad.*

For Cicero, the law, and its extreme expression—justice—are the product of reason, a power that man shares with God. By this logic, therefore, divinely shared reason creates law that is also divine, as justice must be:

> *quid est autem non dicam in homine, sed in omni caelo atque terra ratione divinius? Quae cum adolevit atque perfecta est, nominatur rite sapientia. Est igitur, quoniam nihil est ratione melius eaque est et in homine et in deo, prima homini cum deo rationis societas; inter quos autem ratio, inter eosdem etiam recta ratio communis est; quae cum sit lex, lege quoque consociati homines cum dis putandi sumus. inter quos porro est communio legis, inter eos communio iuris est.*[27]

Cicero, as this passage indicates, has an extremely high opinion of law and justice. Neither Lucretius[28] nor Horace (at least in this Satire) says that the introduction of laws was a beneficial thing, i.e. that law and the rule of law is inherently good . For both, law was a necessity, or, as Horace describes it, a socially needed "utility" (*utilitas*): *sensus moresque repugnant* [i.e. against the idea that all sins are equal] */ atque ipsa utilitas, iusti prope mater et aequi* (Satires 1.3.97-98). Horace, in any event, does not say that the introduction of laws leads to something *worse* than the anarchy that preceded them. In this Lucretius differed, for, in his view, the laws brought new threats, namely, the threats of punishment.[29] For Horace, laws protect the state and the individual; for Lucretius the laws are pacts of mutual defence that may threaten in their own right. Because of the human origin of the laws, however, Horace does not feel constrained to praise them in their own right. He is mostly interested in their purpose and effects.

Horace's outline of the origin of law is similar in its language to that of the Epicurean view, but here the resemblance ends: Horace's concept of justice and the law, as we will see, is not that of Epicurus (or Lucretius) or of a philosophy that may not be "sane": *insanientis dum sapientiae / consultus erro* (Odes 1.34.2-3). For Epicureans law is a response to needs, it is utilitarian, relative to circumstances, and changeable. It has no necessary connection with morality or natural justice.[30] For Horace, law is necessary, but it must also be based on moral values.

[b] Gods, Rulers and the Law

Whether man accepted law from exhaustion (Lucretius) or as a result of some collective necessity to avoid injustice (Horace), the law, once introduced, needs an

underlying authority to give it force and effect. In modern and classical terms, law (and from this the definition of what is crime) is based primarily on the shared power of those social groups which control society through ownership or control of production and resources and on general social consensus and acceptance of that power (without social acceptance the system could face turmoil or collapse).[31] The force of the law is, according to one definition:

> That which is laid down, ordained, or established. A rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force....That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.[32]

Underlying legal force is raw military power, which can be called on to defend the sovereignty of the state and to enforce its laws. These are the underpinnings of a legal system, but to secure legitimacy (i.e. the support of the ruling social order of Rome) required something more, namely, consensus that the system is inherently good, that it is founded on some kind of acceptable social and personal values. For Horace, the legitimacy of the law really depended on a chain of authority that consists of three basic links: gods, rulers and those who implement and maintain the law.

[i] *The gods*: The rôle of the gods in the development of the law (and their essential authority behind the law) was, in general terms, a problem for Epicurean philosophers. First, there is the question of the existence of the gods, and, second, their relationship to man and the world. The Epicurean dilemma: [i] if the gods exist (and whether they have an interest in man or not), then man must worry about punishment in

life, and in death—this provides a strong motivation to live a guiltless (albeit constrained) life in obedience to the law; but [ii] if the gods do not exist, then social organization, law and order depend on a rational understanding of being able "to live for the things that are by nature good."[33] In this latter scenario, the gods may serve a decorative, literary purpose, i.e. as mythical figures that have no real authority to lend to the law. In Stoic philosophy, on the other hand, the existence of the gods and their influence in the world is accepted and the gods are perceived to be the primary origin of law and justice.[34] The rôle of the gods, therefore, is viewed positively: the gods' attributes of reason, sense of justice, and fairness provide a fundamental moral authority to the law. To philosophers such as Cicero this was reasonable, in that gods and men share a common interest, by nature, in protecting and having concern for others; and (by circular argument) this natural interest is reason, which is law and which, in consequence, is justice.[35]

Some prefatory comments. There is no way for us to know what Horace's personal beliefs were with respect to the existence of the gods. In some respects the weight he (and other writers of the period) gives to them (and Jupiter in particular) is at odds with that of the average Roman or that of the state. One commentator has noted: "The literature of the Augustan age offers a contrast to the insignificance of Jupiter in the official religious policy of the period."[36] As a metaphor for power and legitimacy, however, the gods have a rôle to play in Horace's concept of law and justice. Having said this, Horace's approach to the rôle and authority of the gods, as we find it in his poems, incorporates facets of both Epicurean and Stoic thought.[37] On the one hand he declares

that the gods are remote, mythical, and play no part in human affairs. As he writes in Satires 1.5 (following the idea of Lucretius De Rerum Natura 5.82):

> *non ego [sc. credo]; namque deos didici securum agere aevum,*
> *nec, si quid miri faciat natura, deos id*
> *tristis ex alto caeli demittere tecto.*
>
> (vv. 101-103)

Yet, on the other hand, they also serve his purpose, particularly in the so-called political poems (e.g. the Roman Odes, Odes 3.1-6) in passages where Horace is interested in establishing the *auctoritas* of Octavian/Augustus.[38] While the Stoic, rather than the Epicurean view, often seems more acceptable to Horace, he has little to say directly about the precise rôle that the gods play in the development of law. In fact, he makes only a few references that specifically connect the gods, and Jupiter in particular, to the law—in Odes 1.28, for example, there is an allusion that Minos of Crete (traditionally one of the first rulers to receive legal instruction from the gods) was instructed in the (arcane secrets of the) law by Jupiter (*et Iovis arcanis Minos admissus*, v. 9),[39] and a reference that Jupiter's laws do not allow mitigation of crimes against the gods: *sed vetant leges Iovis* (Epodes 17.69). The divine workings of law and justice, however, he leaves unexplained, and presents them as they are revealed through the language and events of myth. Horace tells us, for example, that the gods punish man for his sins (i.e. religious crimes against the gods, cf. Odes 1.2) and for his crimes (against his fellow men); they are just—*prodeat iustis operata divis* (Odes 3.14.6); they bless the good laws of men, as Ilithyia, goddess of birth, is called on to bless Augustus' marriage laws in the Carmen Saeculare:

diva, producas subolem patrumque
prosperes decreta super iugandis
feminis prolisque novae feraci
lege marita.
(vv. 17-20)

and Horace calls on the gods to make youths virtuous and the old to live in quiet: *di, probos mores docili iuventae / di, senectuti placidae quietem* (vv. 45-46). Man petitions the gods for favours and to mitigate divine punishments (cf. Odes 1.2).

[ii] *Rulers*

For Horace, the main importance of the gods (as far as law and authority are concerned) lies in their relationship to rulers. The theme is notably absent from the Satires and Epodes, as we might expect, in that these works were composed largely in the decade separating the battles at Philippi and Actium, during the last triumvirate, when Octavian had not yet acquired the power that was to be his as Augustus. The theme is also mentioned rarely in the Epistles, but it forms a frequent focus in the Odes, with special emphasis on the rôle of Octavian/Augustus[40] and the elaboration of Roman values.[41]

The effectiveness and legitimacy of justice and the law depends predominantly on whether the ruler who puts them in place has the force needed to implement and maintain the system and the moral authority to lend them respect and obedience (i.e. constructive social consensus). The problem was an old one, namely, to find the wise, beneficent ruler, who would not abuse his power. Jones comments: "The best rule conceivable is not the rule of law, but rule by a man who is by nature 'kingly and wise', just as the worst form of slavery is subjection to the worst master, i.e. one with the least self control."[42] Some examples. Herodotus tells us that Solon (c. 594/3 B.C.), a good man, after developing

laws for Athens at the Athenians' request, departed for ten years, so that he would not have any influence on how the laws were implemented (Histories 1.29f.). And Deioces, who at first had been begged to accept a judgeship to end lawlessness, introduced laws and was eventually elevated by the Medes to a kingship and instituted a successful regime (Histories 1.96ff.). We can also consider the examples of Pisistratus, Psammeticus and Darius. For Herodotus, even evil men can create good laws and government (e.g. Amasis).[43] The need for a strong leader, but the equal need to rein in and control him, was understood by Plato, who recognized the problems caused by too great a concentration of power in the hands of a ruler or lawgiver.[44] Horace too came to see the dilemma, as Octavian gradually gathered the reins of power after the battle at Actium.

Horace's "solution", simply stated, was to suggest a fabric of power that both promoted the *auctoritas* of Octavian/Augustus and yet at the same time constrained him. His approach, mainly contained in Book 3 of the Odes, is based on two key points. First, central to the constraint on power was the relationship of Octavian/Augustus to divine authority. Kings and rulers derive their power from the gods (the thought is at least as old as the works of Hesiod). But Horace accepted that it is not a transfer of power. The power exists only by remaining a servant of the gods. Whatever is achieved belongs to them: *dis te minorem quod geris, imperas; / hinc omne principium; hoc refer exitum* (Odes 3.6.5-6). And, as rulers rule on earth, so Jupiter rules them: *regum timendorum in proprios greges, / reges in ipsos imperium est Iovis* (Odes 3.1.5-6). One commentator notes, pointing to this limitation, "in Horace there is a subtle emphasis on the subordination of Augustus to Jupiter, supreme ruler of gods and men."[45] Further:

> Hellenistic encomiastic tradition exercized a marked influence on Augustan panegyric; and together with the Homeric tradition of the divine election of kings, it was the primary literary model for the celebration of Augustus as the divinely chosen earthly counterpart of Jupiter. This is also true for Horace, but the intensity of his emphasis on Augustus' subordination to Jupiter suggests a personal statement as well, a subtle caution against the minor rôle of Jupiter in the political theology of the new principate and a harbinger of Augustus' own misgivings expressed in nocturnal admonitions from Jupiter Optimus Maximus.[46]

There was nothing really new in this. In the earliest odes, Horace sketched out a structure of power that carefully balanced the ruler's powers between those of heaven and earth. Later poems reinforce these opinions.[47] The paramountcy of Jupiter, the rankings of the lesser gods and the place of earthly rulers is laid out clearly in Odes 1.12.13-18):

> *quid prius dicam solitis parentis*
> *laudibus, qui res hominum ac deorum*
> *qui mare et terras variisque mundum*
> *temperat horis?*
>
> *Unde nil maius generatur ipso,*
> *nec viget quicquam simile aut secundum...*

After Jupiter come the lesser gods, and then the Roman heroes of the past, Romulus, Regulus, Curius, Camillus, and others and then, with hints of divinity, the Julian constellation: *micat inter omnes / Iulium sidus, velut inter ignes / luna minores* (Odes 1.12.46-48). By Fate,[48] Jupiter is responsible for Caesar. Caesar rules, second to Jupiter, but Jupiter is the one who punishes (we may note the division of powers: Caesar rules alone on earth with justice, while Jupiter's focus is on religious issues):

> *Gentis humanae pater atque custos*
> *orte Saturno, tibi cura magni*
> *Caesaris fatis data; tu secundo*
> *Caesare regnes.*

... ...

te minor laetum reget aequus orbem;
tu gravi curru quaties Olympum,
tu parum castis inimica mittes
fulmina lucis.

(Odes 1.12.49-52, 57-60)

But, notwithstanding the constraints, Horace presses the importance of (Caesar) Octavian/Augustus in stabilizing the Roman state, in maintaining order. Witke writes:

> Without the state, no Roman Odes, no immortality for Horace; without the state, no escape from the vortex of deliquescence, personal moral decay, and resulting civic collapse for the individual citizen. The Roman state, in the person of Caesar Augustus, is the bulwark between error and oblivion rather than the deathless universality for the poet, between deepening anomie, civic entropy and personal moral ruin rather than purposeful existence for the citizen.[49]

With Augustus at the helm, the state is secure, says Horace.[50] He has nothing to fear, no fear of civil war, no fear of violence: *ego nec tumultum / nec mori per vim metuam tenente / Caesare terram* (Odes 3.14.14-16).[51] It is not just a question of force that brings order (although Horace is willing to accept the death penalty, if necessary—Odes 3.24.24: *et peccare nefas aut pretium est mori*), it is also law, legality. Seager remarks on Horace's approach in Odes 3.24:

> The stand against the unpopularity of Augustus' earliest attempts to legislate on moral issues could not be more clear. The need for moral legislation is presented (25-32) as inextricably linked with a non-controversial blessing brought by the new regime: freedom from civil war. Moral regeneration and the rigours of the law must go hand in hand, complementing and corroborating each other (33-6), and morality will not be served by the unrestrained pursuit of wealth (35-50).[52]

The much quoted verses in Odes 4.5, a poem in which Horace offers a plea to the absent Augustus to return from Spain and Gaul, tie the peaceful state in part to his legislative reforms (here, specifically, the Leges Iuliae de Adulteriis et Pudicitia, 18 B.C.):[53]

sic desideriis icta fidelibus
quaerit patria Caesarem.

Tutus bos etenim rura perambulat,
nutrit rura Ceres almaque Faustitas,
pacatum volitant per mare navitae;
culpari metuit fides,

nullis polluitur casta domus stupris,
mos et lex maculosum edomuit nefas,
laudantur simili prole puerperae,
culpam poena premit comes.

(vv. 15-24)

The structure is complete: Augustus, backed by Jupiter, is in command and, subject to the constraints of power, provides a stable rule that rests on law. Horace sums it all up in the opening verses of one of the most "legal minded" of his poems, Epistles 2.1.1-4:

Cum tot sustineas et tanta negotia solus,
res Italas armis tuteris, moribus ornes,
legibus emendes, in publica commoda peccem,
si longo sermone morer tua tempora, Caesar...

The second part of Horace's approach is to show, by analogy, that Augustus commands the Romans in the same way as Jupiter rules in heaven. In Odes 3.5 the final destination is reached, namely, that Augustus is (or rather will be) himself divine (vv. 1-4):

caelo tonantem credidimus Iovem
regnare; praesens divus habebitur
Augustus adiectis Britannis
imperio gravibusque Persis.

Horace's pointed reference to Augustus' divinity flatters but at the same time by implication puts a limit on Augustus' powers, namely, that he act as justly as Jupiter.[54] The message is barely concealed in the poem that precedes it, in which Horace recounts the defeat of the Titans (the so-called Gigantomachia) at Jupiter's hands (Odes 3.4). The parallel between the revolt of the Titans and Rome's Civil War is unavoidable:

> The struggle of the Titans was an impious one involving a vast throng ultimately crushed by the *fulmine caduco*...That deity [i.e. Jupiter] alone rules the earth, the sea, cities, kingdoms, the living and the dead; and he rules *imperio aequo*. What is immediately obvious about the entire passage from verse 42 to verse 48 is that it is analogous to the Civil War recently ended by Caesar; Jupiter is the paradigm of Octavian...Jupiter rendered his realms safe even as has Octavian; both are responsible for maintaining the peace of their kingdoms; each has a mighty weapon—the one hidden armies, the other the thunderbolt; by force each has triumphed.[55]

To summarize: The effect, then, of Horace's approach, is [a] to link Octavian/Augustus to the gods, and to Jupiter in particular, with Jupiter having paramountcy, and [b] to tie Octavian/Augustus' behaviour to that exhibited by Jupiter. The key point, for our purposes, is that Horace's link between Jupiter and Augustus is expressed with reference to *imperio aequo*, the hallmark of justice and restraint; as Horace writes, the battle against the Giants is that of restrained force (Jupiter and, by analogy, Augustus)[56] against those who lack wise advice: *vis consili expers mole ruit sua; / vim temperatam di quoque provehunt / in maius; idem odere vires / omne nefas*

animo moventes (Odes 3.4.65-68). The message for Augustus is subtly expressed: brute force without reason will be defeated and the victor wins because his actions are moral.[57]

The relationship between Augustus and the gods developed by Horace was not one that Augustus (arguably) cultivated for himself. But the emphasis that Horace attributes to the just rule of kings, and of Augustus in particular, was of particular interest to Augustus. He cites the attributes himself in the Res Gestae 34.2, where he points to four qualities (three of which are directly pertinent to a person with supreme responsibility for law and justice), namely, *virtus*, *clementia*, *iustitia*, and *pietas*[58] (inscribed on the famous *clupeus virtutis*) awarded to him by the Senate and people of Rome in 27 B.C.:

> *Quo pro merito meo senatus consulto Augustus appellatus sum et laureis postes aedium mearum vestiti publice coronaque civica super ianuam meam fixa est et clupeus aureus in curia Iulia positus, quem mihi senatum populumque Romanum dare virtutis clementiaeque et iustitiae et pietatis causa testatum est per eius clupei inscriptionem.*

We have seen that, for Horace, law is a man-made product that gains its authority from rulers (i.e. Octavian/Augustus) who derive their power (and thus the force of the law) from the backing of the gods. Below this superstructure of power and moral authority are those individuals who work in and for the legal system. In the following pages we will examine the rôle that these legal practitioners play in Horace's poems.

[c] Judges, Lawyers and Litigants

Horace may view Jupiter and Rome's rulers as the providers of the authoritative and moral framework for Rome's legal system, but on a daily basis it is the work of the courts, judges and lawyers to implement and maintain whatever laws are effected. It is

here that the law and justice are tested in practice. It is interesting that Horace has very little to say about Rome's legal institutions as institutions, or the functioning of the courts.[39] Instead, he focusses on the personalities involved with the law. Most of Horace's references to the legal system consist of brief mentions of the individual judges, lawyers and legal experts who work within the court system or provide legal counsel to their friends and clients.[60] Through his close association with Maecenas and members of Augustus' circle, Horace had access to the administrative machinery of Rome and to its personalities.[61] It is not surprising, therefore, to encounter in his poems the names of prominent and not so well-known jurists, lawyers and judges,[62] including, for example, Paulus Fabius Maximus, a friend of Ovid[63] and praised by Horace for his handsome looks and eloquence in defending his clients (Odes 4.1.9ff.); Galba (a lawyer and adulterer, Satires 1.2.46); Labeo (a crazy jurisconsult, Satires 1.3.82f., but who emerged as one of the three most famous jurists of the Augustan period, together with Capito and Trebatius);[64] Alfenus *vafer* (Satires 1.3; P. Alfenus Varus, a pupil of the famous jurist Servius Sulpicius Rufus)[65] who is supposed to have been a cobbler before taking up the law; the unknown, hard-working Pedius Poplicola and Corvinus (M. Valerius Messalla Corvinus?) who labour at their Latin speeches (Satires 1.10.25-30); Florus, who, whether he will plead in court or offer legal advice, will win the ivy (Epistles 1.3); the two brothers at Rome, a lawyer and a pleader (Epistles 2.2.87-89) who, Horace notes, recall (Gaius?) Gracchus (brother of Tiberius) and Mucius (P. Mucius Scaevola?--who was one of the founders of the civil law [Digest 1.2.2.39]); Cascellius Aulus ("an eminent lawyer, distinguished, however, not so much for his learning...as for his wit and boldness");[66] and,

finally, arguably the greatest lawyer of the Augustan period, C. Trebatius Testa, a friend of both Cicero and Caesar (Satires 2.1), and, despite age and status differences, a friend of Horace.[67] It is reasonable to assume that these were more than names; Horace either knew these members of the legal community personally, or knew of them and their work through acquaintances in the state bureaucracies.

From childhood Horace was impressed by *iudices* as upright members of the community: his father, he tells us, pointed them out as figures of probity who were worth emulating:[68]

> *...sic me*
> *formabat puerum dictis, et sive iubebat*
> *ut facerem quid, "habes auctorem quo facias hoc,"*
> *unum ex iudicibus selectis obiciebat.*
>
> (Satires 1.4.120-123)

But this childhood lesson was not always reflected in Roman life. The portrait that Horace gives us of the legal community and the courts is a mixture of the good and the bad. There are only a few passages that refer (and even then obliquely) to the courts and court cases, and these focus not on form or process but on the speaking skills of the participants. The first is found in Satires 1.7 (written at some point between 41 and 35 B.C.), where Horace treats us to a sketch of a courtroom exchange (*magnum spectaculum uterque*) between the litigants Rupilius Rex and Persius:

> *...Rupili et Persi par pugnat, uti non*
> *compositum melius cum Bitho Bacchius. In ius*
> *acres procurrunt, magnum spectaculum uterque.*
> *Persius exponit causam; ridetur ab omni*
> *conventu; laudat Brutum laudatque cohortem;*

solem Asiae Brutum appellat, stellasque salubris
appellat comites, excepto Rege; Canem illum,
invisum agricolis sidus, venisse. Ruebat
flumen ut hibernum, fertur quo rara securis.
Tum Praenestinus salso multoque fluenti
expressa arbusto regerit convicia, durus
vindemiator et invictus, cui saepe viator
cessisset magna compellans voce cuculum.

(vv. 19-31)

This almost farcical scene (almost certainly invented!)[69] ends with Persius' appeal to Brutus to behead Rex (a pun on the word for "king"). The participants joust verbally and the audience laughs--something hardly complimentary to the process of litigation. It exposes also something more serious that the poet intimates may interfere with the course of justice, namely, the clear advantage in the court of the man whose speech flows on like a winter torrent (and who can no doubt sway the audience with his oratory and wit) to the detriment of his seemingly slow-witted opponent, a country fellow, a pruner of vines, who can only hurl abuse. Here, then, is a situation in which Horace implies that the power of language and rhetoric may work against the interests of justice. And what of Paulus Fabius Maximus, the handsome, accomplished youth who gives elegant parties? He pleads eloquently for his anxious clients (*pro sollicitis non tacitus reis,* Odes 4.1.14), a hint that they are guilty but will escape because of his skill in court. Horace takes aim again at courtroom language in Satires 1.10, where he raises the question whether counsel in a difficult lawsuit should mix Greek and Latin in their presentations; the issue being whether style and rhetorical skill, with its share of Graecisms, are more important than substance and the case at hand.[70] Better in the courtroom, in Horace's mind, is the

middling skill of the lawyer and the legal pleader, which is adequate for legal purposes, a skill that falls short of the poet's.[71] He writes in the Ars Poetica:

> *O maior iuvenum, quamvis et voce paterna*
> *fingeris ad rectum et per te sapis, hoc tibi dictum*
> *tolle memor, certis medium et tolerabile rebus*
> *recte concedi. Consultus iuris et actor*
> *causarum mediocris abest virtute diserti*
> *Messallae, nec scit quantum Cascellius Aulus,*
> *sed tamen in pretio est.*
>
> (vv. 366-372)

Why is a lesser style of language good enough for lawyers and pleaders, but not for poets? Perhaps because Horace was aware of the power of language to move, to convince, a power that is central to the gifts of the poet, but not necessarily appropriate in the pursuit of justice. Horace may well have in mind the conflict in the last century of the Republic, in which conservative minded jurists encountered a different style of jurisprudence, one based on Greek learning and philosophy and the powers of oratory. Kunkel observes:

> The impulse was provided by contact with Greek learning, above all with the disciplines of rhetoric and philosophy. From these the Roman jurists learned the dialectical method resting on the analysis and synthesis of concepts...Understandably, this fertilization through the spirit of the Greek scientific mind was not completed without a struggle and without crises, when the old-style jurists found themselves confronted by court orators trained in the Greek manner and threatening to give short shrift to their formalistic and unhelpful learnedness...In this way Roman jurisprudence was almost in danger of losing its reputation, as well as its influence on the new-fangled rhetorical technique—a technique which was able and willing to prove that black was white, to ignore a statute or custom by appealing to real or apparent equity, and to obscure in a cloud of commonplaces and clichés all sharp and clear legal concepts even before their nature was properly appreciated.[72]

It was the power of language, Horace observes in the same poem (vv. 391-396), that played such a large part in the civilizing of man, through Orpheus. And Amphion was able to build Thebes through music and prayer. These same allurements of voice and language, however, can also be used to persuade in the aid of good or bad causes. It was precisely this power of oratory that was appreciated and encouraged by Cicero, who was disdainful of lawyers and their narrow juristic interest in legal interpretation.[73] But, on the other hand, Horace praises a man like Julius Florus (a *scriba* who also composed satires), because of his talent for legal pleading and for providing legal advice:

> *seu linguam causis acuis seu civica iura*
> *respondere paras seu condis amabile carmen,*
> *prima feres hederae victricis praemia.*
>
> (Epistles 1.3.23-25)

In this case Horace is happy to laud a poet who also takes an active rôle in civic affairs.[74]

We may also turn to Satires 1.9, where Horace recounts his famous encounter with the boring "pest." As the author attempts to elude his unwelcome companion in the streets of Rome, the plaintiff in a suit against the pest arrives to take him to court. Unfortunately for the author, who has pleaded that he cannot help and knows nothing about the law (*...interream, si / aut valeo stare aut novi civilia iura*, vv. 38f.), the plaintiff takes him too by the ear, to appear as a witness in the case:[75]

> *...casu venit obvius illi*
> *adversarius, et, "quo tu turpissime?" magna*
> *inclamat voce, et "licet antestari?" ego vero*

oppono auriculam. Rapit in ius.

(vv. 74-77)

But at this point the author leaves us to ponder what went on in the proceedings and how the hero escaped after performing his civic duties.

And so they remain, for the most part, throughout his poems, lawyers and judges who are implicitly honest, hard working men, knowledgeable in the law and just in their verdicts.[76] We can see clearly the local patrician, in the early days of Rome, dispensing legal and investment advice to his neighbours and clients:[77]

Romae dulce diu fuit et sollemne reclusa
mane domo vigilare, clienti promere iura,
cautos nominibus rectis expendere nummos,
maiores audire, minori dicere per quae
crescere res posset, minui damnosa libido.

(Epistles 2.1.103-107)

In later days, however, the local lawyer is not so enthusiastic about his duties and looks from his discontent at the advantages of the farmer's life (who in turn envies the life of the city dweller):

agricolam laudat iuris legumque peritus,
sub galli cantum consultor ubi ostia pulsat.
Ille, datis vadibus qui rure extractus in urbem est,
solos felices viventis clamat in urbe.

(Satires 1.1.9-12)

But Horace appreciated the hard work of lawyers, and he invites Torquatus to dine, tempting him with Massic wine, and urging him to set aside his work and pursuit of wealth: *mitte levis spes et certamina divitiarum / et Moschi causam* (Epistles 1.5.8-9).[78]

The lawyers, pleaders in court and litigants whom we find scattered throughout Horace's poems contribute to what Cloud calls the "Romanness" of his works. Here, as we have seen, Horace introduces us to named individuals, some well-known for their contributions to Roman law (notably Trebatius and Labeo), others anonymous, who go about their business, both in the public courts and in dispensing advice to their friends and clients. Such references add a topicality and contemporaneity to the poems, and, for our purposes, give flesh and blood to the legal strands that are part of the fabric of his art. But the references are more than this: Horace held the legal community in great respect; he included lawyers and judges in his circle of friends and acquaintances; and he was, if the strength of the legal strands in his poems is considered, genuinely interested in their work.

Gods, rulers, judges and lawyers define the authoritative and administrative facets of the law. The system exists, however, to administer the Roman people, who also have a rôle to play. Horace's opinion of the people, taken collectively, is not flattering, particularly in its powers of judgement. In Horace's mind, the people judge things by different criteria—it values literature by its age,[79] for example, but is also amazed (*stupet*) by such things as titles and appearances;

> *...notante*
> *iudice quo nosti populo, qui stultus honores*
> *saepe dat indignis et famae servit ineptus,*
> *qui stupet in titulis et imaginibus.*
>
> (Satires 1.6.14-16)

The fickleness of society as a whole is offset by the individual Roman, the *vir bonus*, who is, for Horace, the most important element in law and order. But who is the "good man"?

It should be someone, Horace notes, who is fully obedient to the law, who obeys not only the laws (*leges*, statutes) but also the edicts (*consulta*) and the broader rules and procedures of society (*iura*); it should be someone who settles lawsuits, and who stands surety:

> *vir bonus est quis?*
> *"qui consulta patrum, qui leges iuraque servat,*
> *quo multae magnaeque secantur iudice lites,*
> *quo res sponsore et quo causae teste tenentur."*
>
> (Epistles 1.16.40-43)

He is, above all, a man who stands firm for justice, despite all threats against him, even threats from Heaven itself. It is appropriate that such a man (as well as Pollux, Hercules, Romulus, Bacchus and Augustus) should feature at the beginning of the third ode of Odes 3, at the heart of the Roman Odes:

> *Iustum et tenacem propositi virum*
> *non civium ardor prava iubentium,*
> *non vultus instantis tyranni*
> *mente quatit solida neque Auster,*
>
> *dux inquieti turbidus Hadriae,*
> *nec fulminantis magna manus Iovis;*
> *si fractus inlabatur orbis,*
> *impavidum ferient ruinae.*
>
> (vv. 1-8)

But this is not enough for Horace. It is not enough to follow the rules outwardly, if inside all is foul: *sed videt hunc omnis domus et vicinia tota / introrsum turpem, speciosum pelle decora* (vv. 44-45). The foundation of the law and justice, then, its origin, as for the truly *vir bonus*, combines what is inwardly good with external observance. By

implication, as we will see in the next chapter, the difference between the two is what may be defined as "crime."

To sum up. Like the Epicureans, Horace attributed the development of law to the needs of a society to curtail, and defend itself, against uncontrolled social violence. Part of an urbanizing process, laws prohibited, or made punishable, certain acts of individuals against society. For the Epicureans, who abhorred political involvement, laws were a necessary evil, as threatening to individuals as they were needed to protect them. For Horace, too, such laws were required as an instrument of social and political control: his thoughts were never far from memories of the Civil War and the need to prevent further divisive, fratricidal wars. But, unlike the Epicureans, he saw that a legal system not only protected society from the violence of individuals but also dealt with the injustices resulting from such violence. Here, then, is the idea that acts are not without consequences; justice exists to right the balance.

As we have seen, Horace was well aware that a legal system requires some authority that garners the respect, and hence the adherence, of the citizenry. For Horace, this authority was derived from a power structure based on the gods. The gods did not themselves "write" the laws, but they provided the moral authority to earthly rulers (specifically Octavian/Augustus) who could and did write them and give them force. Within this framework (which essentially establishes the legal sovereignty of the Roman state), the laws are implemented and maintained by the everyday practitioners of the law who sustain the system. And, beneath the administrators of the law is the citizenry itself, consisting, Horace would have us hope, of people like the *vir bonus* who should live in a

way that "internalizes" the law, i.e. willingly accepting law's precepts, because the precepts are morally good.

---

[1] Niall Rudd, The Satires of Horace (Cambridge, Cambridge University Press, 1966), p. 8: "Like other features of civilization, laws are the product of need. They were worked out by man for his own protection, and since they are in essence social agreements rather than scientific discoveries they do not allow categorical judgements."
[2] Cicero, Topica 5.28.
[3] Gaius, Institutes I.2.
[4] Friedo Ricken, Philosophy of the Ancients (tr. by E. Watkins. Notre Dame, Indiana, Notre Dame University, c1991), p. 170.
[5] A. W. Lintott, Violence in Republican Rome (Oxford, Clarendon Press, 1968), p. 204f.
[6] See, for example, Epodes 7 and 16.
[7] Robin Seager, "Horace and Augustus: Poetry and Policy" (in: Horace 2000: A Celebration. Ed. by Niall Rudd. Ann Arbor, University of Michigan Press, c1993), p. 26.
[8] Seager, p. 26. Other Odes include Odes 3.14, 1.6, 1.7
[9] The tone of this Epode links the thought throughout to the law by using words and phrases that convey a legal atmosphere. *Furorne caecus an rapit vis acrior / an culpa? Responsum date!* (vv. 13-14): *Furor* and *vis acrior*: As Mankin observes: "The furor might be caused by disease, not divine wrath...while the *culpa* might be opposed by the other two, since in Roman law 'responsibility' for action was obviated by both *furor* ('unsoundness of mind'..) and *vis maior* ('act of god'...)....*responsum* can mean an answer to an ordinary question but here...there may be a suggestion of two other senses, 'legal opinion' and especially 'answer given by an oracle, soothsayer or sim[ilar].' The former would fit with the legal or quasi-legal terms in Horace's question..." (Horace, Epodes [ed. by David Mankin. Cambridge, Cambridge University Press, c1995], p. 148).
[10] Horace, Epodes (ed. Mankin) p. 143. Others have noted that Horace does not object to the death of Romans *per se*. E. S. Gruen observes that the waste is in civil war, which prevented Rome from expanding its domain among the Parthians, Gauls, Scythians, etc. ("Augustus and the Ideology of War and Peace," in: The Age of Augustus: Interdisciplinary Conference held at Brown University, April 30-May 2, 1982. Proceedings. Ed. by R. Winkes. Providence, Brown University, 1985, p. 57).
[11] Cf. Odes 1.4 (*Solvitur acris hiems...*), in which season follows season, uninterrupted, and death comes impartially to all: *Mors aequo pulsat pede*...[v. 13]. Death here is impartial (*aequus*), i.e. there is no sense of punishment, and thus no crime.
[12] As J. F. D'Alton states (Horace and His Age, London, Longmans, 1917, p. 85): "Horace, in Epicurean fashion, defends the utilitarian origin of justice, law and society...He is here reviving an old controversy, as to whether justice was a law of Nature or a matter of convention."
[13] J. H. Nichols, Jr., summarizes Lucretius' view (Epicurean Political Philosophy, Ithaca, Cornell University Press, 1976, pp. 143-144): "The violence of life came from man's

hostilities to one another; the remedy could no longer be friendship such as existed in prepolitical society, for competition and complicated limitless desires were by now firmly established among men. What was needed was something new, justice, that is, laws, to which obedience was enforced with punishments."

[14] See Odes 2.15. The life of the golden age is detailed by Lucretius (De Rerum Natura 5.925ff.). Horace finds something of the values of such a mythical age among the Getae (Odes 3.24): *vivunt et rigidi Getae, / immetata quibus iugera liberas / fruges et Cererem ferunt, / nec cultura placet longior annua, / defunctumque laboribus / aequali recreat sorte vicarius* (vv. 11-16). It was to this kind of world, the islands of the blest (see Hesiod, Works and Days vv. 109-210), that Horace saw as a refuge from renewed civil war (Epodes 16.39-66). This world did not have any administrative machinery, a king, or, one may assume, laws.

[15] The value of language was seen by Aristotle (Politics 1253a10-18). David Cohen observes (Law, Violence and Community in Classical Athens. Cambridge, Cambridge University Press, 1995, p. 37): "The capacity for discourse (*logos*), as opposed to mere voice, separates human beings from animals because it permits them to distinguish good from bad, and right from wrong. It is this common capacity, in turn, which makes human associations possible, for these associations rest upon shared moral perceptions."

[16] V. 105 (*oppida coeperunt munire et ponere leges*) suggests two interpretations. First, the institution of laws may be seen as responsive to the brutalities of life in the countryside, i.e. the response was to both build towns *and* put laws in place. Second (more likely), the laws may be seen as a consequence of town development, i.e. urbanization produced conditions that led to laws about theft, assault and adultery. This was then a secondary development. If we consider Greek sources, the latter alternative is often supported. George Thomson, in his study Aeschylus and Athens (4th ed. London, Lawrence & Wishart, 1973, pp. 297-324) quotes passages from Moschion (p. 317), Kritias (p. 318) and Diogenes (p. 321), all of which suggest that laws came after urbanization and as a result of it.

[17] For a study of Epicurus, justice and the law, see Antonina Alberti, "The Epicurean Theory of Law and Justice" (in: Justice and Generosity, ed. by A. Laks. Cambridge, Cambridge University Press, 1995, pp. 161-190).

[18] See Lucretius, De Rerum Natura 5.925ff., for the development of man. The decline into anarchy is described in vv. 1136-1142. The turn to law and order, says Lucretius, came about as a result of exhaustion: *nam genus humanum, defessum vi colere aevum, / ex inimicitiis languebat; quo magis ipsum / sponte sua cecidit sub leges artaque iura* (vv. 1145-1147).

[19] *Urbes vero sine hominum coetu non potuissent nec aedificari nec frequentari; ex quo leges moresque constituti, tum iuris aequa discriptio certaque vivendi disciplina; quas res et mansuetudo animorum consecuta et verecundia est effectumque ut esset vita munitior, atque ut dando et accipiendo mutandisque facultatibus et commodis nulla re egeremus.*

[20] Ricken, p. 216.

[21] Jaap Mansfield, "Aspects of Epicurean Theology" (Mnemosyne 46[1993]), p. 181, comments that although the gods are ethically good, they have no part in human affairs: "They [the gods] are all important in the context of ethics, their blessedness in fact being the paradigm of what may be attained by living men, whereas their rôle in the context of natural philosophy is entirely negative; as to physics, it is of primary importance to establish that the gods, consistently with their blessed state, are in no way involved in what happens in nature, let alone to humans."
[22] Nichols, p. 150.
[23] See, for example, Livy 1.19.5.
[24] De Rerum Natura 5.1143-1144.
[25] Alberti, p. 165.
[26] Nichols, p. 146.
[27] Cicero, De Legibus 1.7.22f.
[28] Nichols, p. 146: "According to Lucretius' own account, the establishment of laws seems to be a great improvement over the violent preceding period (in which one suspects no one could have lived peacefully), yet he makes no explicit statements about the benefit of laws for human life but talks only of the new fear of punishment."
[29] Nichols, p. 146.
[30] See Alberti, pp. 185f.
[31] Cf. Cicero's observations in De Officiis 2.6.22f. concerning the need to obtain the affection of others in one's own self interests and the problems of the tyrant who relies on fear to maintain power. No amount of power, he notes, can overcome lack of popularity.
[32] Black's Law Dictionary (5th ed. St. Paul, Minn., West Publishing, 1979).
[33] Nichols, p. 167.
[34] For a discussion of Stoic approaches to justice and law, see Malcolm Schofield, "Two Stoic approaches to Justice" (in: Justice and Generosity, ed. by A. Laks. Cambridge, Cambridge University Press, 1995, pp. 191-212).
[35] Schofield, p. 204. As he notes (p. 207) on the Stoic relationship between justice and law: "To explain justice by reference to law conceived as a form of reason is therefore to secure not merely its objectivity but its rôle in the general pattern of things. It is to insist that the commands and prohibitions which the rational man internalizes as the moral law within are rooted in and in agreement with universal nature, since universal nature *is* reason at work, prescribing the proper order of the universe."
[36] J. Rufus Fears, "Jupiter and Roman Imperial Ideology" (Aufstieg und Niedergang der römischen Welt. Band II.17.1 Berlin, 1981), p. 66.
[37] This is not to say that he accepted either position completely. As we will see later, there were aspects of the Stoic position, namely, that all crimes are equal, that Horace could not accept (and indeed he ridiculed such an approach). The place of Epicurean and Stoic thinking in Horace's work is a vexed question that is beyond the scope of this work.
[38] See, for example, Steele Commager, pp. 160-234. As Commager notes (p. 103): "In many of the political odes, divine myth operates as a kind of prolonged metaphor, and it is rare that his so-called "nature odes" are simply descriptive. The dialectic so prominent in

these two groups of poems occurs constantly elsewhere in less noticeable form. We see it in his fondness for rationalizing mythology and, conversely, in his tendency to mythologize reality."

[39] Horace, Odes and Epodes, ed. by Shorey, p. 219.

[40] It is beyond the scope of our study to examine the complex and well-studied relationship between Horace and Augustus, or to consider, for example, the sincerity of any statement made by Horace about Augustus. Instead, E. S. Gruen's approach is taken ("Augustus and the Ideology of War and Peace", p. 55f.): "We may pardonably forbear entering the tangled thicket of interpretation that seeks to determine how far the Augustan writers mouthed the precepts of the *princeps* or served as subsidized spokesmen for the regime. The question is complex, ambiguous, and perhaps ultimately unanswerable. But it is not essential for our purposes to determine whether the poets conveyed official propaganda or acted as purely free agents, whether they were advocates or critics of the government. We operate instead on a different premise: when certain concepts reappear with consistency in Augustan literature [i.e. for our purposes Horace's poems, MNA], this reflects at least the prevailing atmosphere of public discussion."

[41] The relationship between Jupiter and Octavian/Augustus is expressed in some of the most "Pindaric" of Horace's odes. See E. L. Highbarger, "The Pindaric Style of Horace," Transactions of the American Philological Association, 66(1935), pp. 222-255.

[42] J. Walter Jones, p. 5f.

[43] For Herodotus' views, see Stewart Flory, The Archaic Smile of Herodotus (Detroit, Wayne State University Press, 1987), pp. 119-149.

[44] See Werner Jaeger, Paideia: the Ideals of Greek Culture. Tr. by G. Highet. V.3. New York, Oxford University Press, c1944, pp. 213-262.

[45] Fears, p. 68. While the relationship between Jupiter and Octavian/Augustus is highlighted for purposes of our subject, this is not to imply that the other gods do not have an important rôle to play. For a brief overview, see Eduard Fraenkel, Horace (Oxford, Clarendon Press, 1957), pp. 239ff.

[46] Fears, p. 69.

[47] M. S. Santirocco observes that the divinity of Augustus is an idea that Horace develops slowly across his poems, by associating him with various deities as well as Jupiter, such as Mercury (Odes 1.2), Hercules (Odes 3.14). The divinity, he notes, is expressed in the Roman Odes: "The Roman Odes, then, are not unique in deifying Augustus. But their treatment of the theme is novel in three other respects: first, they develop it not individually as unrelated poems, but collectively; second, their movement is progressive; and third, the direction of this progress is toward a more explicit and unqualified statement of divinity than occurs elsewhere in Horace's first lyric collection." ("The Two Voices of Horace: Odes 3.1-15," in: The Age of Augustus. Interdisciplinary Conference held at Brown University, April 30-May 2, 1982. Proceedings. Ed. by R. Winkes. Providence, Brown University, 1985, p. 18).

[48] Unlike the Greeks, the Romans placed less emphasis on the rôle of Fate as a causal force. There is nothing to suggest that Horace viewed Fate as a factor in the commission

of crime. He does, of course, refer to Fortuna (e.g. Odes 2.1.3 [the Civil Wars as a result of *ludus fortunae*], and Odes 4.14.37-40 [good fortune and Augustus' triumphs in war], and Horace's hymn in Odes 1.35 that good fortune accompany Augustus' invasion of Britain and other expeditions), which is imbued with the features of (fickle) luck, good chance. The danger is that Fortuna, because of some "step that is outside the law," may bring about the downfall of the state: *iniurioso ne pede proruas / stantem columnam, neu populus frequens / "ad arma" cessantes, "ad arma" / concitet imperiumque frangat* (Odes 1.35.13-16). For details of these, as well as a comprehensive study of Fortuna in Roman thinking, see Iiro Kajanto, "Fortuna," Aufstieg und Niedergang der römischen Welt, Band II. 17.1. Berlin, 1981, pp. 502-558. As Kajanto writes (p. 517): "The conclusion seems inevitable, Fortuna, such as she appears in Roman religious life, was not the personification of blind chance. She remained primarily the goddess of luck, the bringer of good fortune."

[49] Charles Witke, Horace's Roman Odes (London, Brill, 1983), p. 18.

[50] Odes 4.15, for example, lauds Augustus for his peaceful achievements. He guards the state (*custode rerum Caesare non furor / civilis aut vis exiget otium, / non ira, quae procudit enses / et miseras inimicat urbes* (vv. 17-20). It should be noted that Horace's references to peace and tranquillity do not preclude wars in Rome's interests, or the use of force to impose law and order on those defeated. Gruen notes (p. 66): "The image of the regime as master by force or threat of arms, and then ruler and law-giver of the universe is a consistent one. Whatever his personal predilections, Horace accurately reflects the dominant propaganda of the era."

[51] The poem marks Augustus' return from the West, c. 24 B.C. The contrast between the security offered by Augustus and anarchy is heightened by Horace's references to the Marsic/Social wars (v. 18) and the ravages of Spartacus (vv. 19f.).

[52] Seager, p. 27.

[53] See also Odes 4.14, where Horace refers to the Vindelici, who were, until Augustus, unused to Roman laws: *quem legis expertes Latinae / Vindelici didicere nuper / quid Marte posses.*. (vv. 7-9). And, in Odes 4.15, Horace recalls the distant peoples who now keep the Julian laws: *non qui profundum Danuvium bibunt / edicta rumpent Iulia, non Getae, / non Seres infidive Persae, / non Tanain prope flumen orti* (vv. 21-24).

[54] Santirocco (p. 20) defines the limitations as well as the power inherent in Augustus' divinity: "And yet, while it is true that posthumous deification may set some sort of limit to Augustus' godhead, this is a limit imposed not independently by the poet but by Augustus himself who discouraged people, at least in the West, from worshipping him as a god during his lifetime. The poet's use of kingship theory has also been read as a qualification, for it insists on the primacy of Jupiter to whom even Caesar is subject. And yet, Jove's special jurisdiction over kings does not so much qualify as validate their rule on earth which is, by implication, analogous to his rule in heaven. To say that Augustus is second to Jupiter is to say that he is second to no one else."

[55] Roger A. Hornsby, "Horace on Art and Politics (Ode 3.4)," Classical Journal 58 (1962-3), p. 101.

[56] A. J. Dunston notes: "In a later stanza Horace begins to draw the threads together: the violence of the Giants, of Augustus' former enemies, is *vis consilii expers*: contrasted with it is the *vis temperata*, which is obviously intended to be that of Augustus" ("Horace—Odes III.4 and the "*Virtutes*" of Augustus", Australasian Universities Modern Language Association, 38 (1969), p. 17).

[57] Hornsby, p. 101.

[58] For a discussion of the four virtues, see Karl Galinsky, Augustan Culture (Princeton, Princeton University Press, c1996), pp. 80-88. For an analysis of the Res Gestae, see Edwin S. Ramage, The Nature and Purpose of Augustus' *Res Gestae* (Stuttgart, Historia, Einzelschriften, 1987).

[59] The final verse of Satires 1.9.78, *sic me servavit Apollo*, connects Apollo, the god learned in the law, with either the law library (or section of the library set aside for a law library) dedicated by Augustus in the temple of Palatine Apollo, or to the temple of Apollo, the lawyers' headquarters. See Richard A. Bauman, Lawyers and Politics in the Early Roman Empire (C. H. Beck, Munich, 1989), pp. 40-42.

[60] Some definitions are in order. The *iudex* as a term may stand for the judge in charge of a court, such as a *quaestio*, or for a member of a panel of judges, such as might be appointed by a magistrate to render a judgement in a case. The latter are closer to our notion of a jury person. Horace typically uses the term both in the legal sense, but also in the broader sense of one who judges. No training was required for the *iudex*. While we may use the term lawyer as a convenience, there was no Roman equivalent. During the late Republic there was no formal training required to practice law, although legal education was available, with the result that there were trained, experienced lawyers and a great number of lesser trained practitioners. "Pleaders" in court cases could be lawyers, the litigant himself, or persons with a gift for oratory (such as Cicero). For definitions and descriptive accounts, see Bauman (Lawyers and Politics).

[61] As J. Crook observes, Horace's patron, Maecenas, was, during the first half of Augustus' rule, one of two of Augustus' closest *amici* and advisors (with Agrippa). Horace's access to the inner circle of Augustus was thus facilitated by Maecenas. At one point, Suetonius tells us in the Vita Horati, Augustus wanted to employ Horace as his personal secretary, which Horace rejected on the grounds of ill health. Book 4 of the Odes was written at Augustus' request. These few details among those that we possess about the relationship of Augustus and Horace indicate Augustus' esteem for the poet (see Fraenkel, pp. 1-23). For the rôle of Augustus' advisors, see: J. Crook, Consilium Principis (Cambridge, University of Cambridge Press, 1955).

[62] Bauman (Lawyers and Politics, pp. 21ff.) has noted that certain lawyers were liked by Augustus. Of those cited by Horace, Alfenus and Trebatius Testa were among Augustus' favourites. Labeo (whom Horace labels "crazy") and Cascellius were not.

[63] See Ovid, Ex Ponto 1.2, 67ff., and 115-118.

[64] The identities of both Labeo (M. Antistius Labeo?) and Alfenus (P. Alfenus Varus?) as lawyers are disputed by Fraenkel (p. 89) and others (e.g. Morris, p. 61). With reference to Alfenus, Bauman (Lawyers in Roman Transitional Politics, pp. 89-105) takes the view that

Horace is in fact referring to the famous jurist and uses this connection to Horace to show that Alfenus was also close to Maecenas and Octavian. With respect to Labeo, Bauman is familiar with the controversy (Lawyers and Politics, pp. 33-35), observing that, since Labeo may have been earlier than Horace's detractors think and since there is some evidence that Labeo did behave strangely during the 30's, perhaps Horace's Labeo is the jurist after all. For an account of the opposing law schools established by Labeo and Capito, as well as biographical sketches, see Bauman, Lawyers and Politics.

[65] For the careers of Alfenus Varus and Servius, see Bauman, Lawyers in Roman Transitional Politics.

[66] Augustus S. Wilkins, ed. The Epistles of Horace (London, MacMillan, 1929), p. 402. Wilkins is sceptical that Cascellius was still alive in 8 B.C. Bauman characterizes him as follows: "[Cascellius] was celebrated both for his legal expertise and for his urbanity, and his witticisms enjoyed a great vogue. Apart from his comment on freedom of speech, he appears to have adopted a jocular tone even in his consultations—a feature not exhibited by any other jurist" (Lawyers in Roman Transitional Politics, p. 119).

[67] Fraenkel observes (p. 146) that while there may not have been a close, intimate relationship: "on the other hand, it is clear that there was between them far more than a nodding acquaintance. Horace, whose discretion in matters of social intercourse we know, would never have invented a talk with Trebatius in such familiar if respectful terms unless he was sure that the famous jurist really cared for him, liked his wit and his writings, and would be very pleased with the compliment of being chosen to usher in Horace's book."

[68] Morris (p. 82) observes that the *iudices selecti* formed "the panel of special jurymen selected by the *praetor urbanus* to act in criminal cases. They were likely to be citizens of character and standing."

[69] As Fraenkel remarks (p. 119): "We may safely assume that in the months preceding the battle of Philippi far too many events of importance took place to make it worth while even for an officious busybody to inform the inhabitants of the capital of a trivial incident that had occurred some time ago at one of the many lawsuits before the praetor in remote Asia."

[70] Horace writes: *...an et cum / dura tibi peragenda rei sit causa Petilli? / scilicet oblitus patriaeque patrisque, Latine / cum Pedius causas exsudet Publicola atque / Corvinus, patriis intermiscere petita / verba foris malis, Canusini more bilinguis?* (Satires 1.10.25-30).

[71] Horace's position that lawyers and pleaders require a lower literary language than that of the poets amazes some commentators. The point is, however, that Horace did not want language to interfere with justice.

[72] Wolfgang Kunkel, An Introduction to Roman Legal and Constitutional History (Tr. by J. M. Kelly. Oxford, Clarendon Press, 1966), p. 94f.

[73] See Alan Watson, pp. 195-200 (Cicero the Outsider). For Cicero's use of rhetoric see, for example: James M. May, "The Rhetoric of Advocacy and Patron-Client Identification: Variation on a Theme," American Journal of Philology 102 (1981), pp. 308-315; and

May's monograph, Trials of Character: The Eloquence of Ciceronian Ethos (Chapel Hill, University of North Carolina Press, c1988); A. D. Leeman, "The Technique of Persuasion in Cicero's Pro Murena," in: Eloquence et Rhetorique chez Ciceron (Geneva, Vandoeuvres, 1981), pp. 193-228; John T. Kirby, The Rhetoric of Cicero's *Pro Cluentio* (Amsterdam, Gieben, 1990).

[74] Roland Mayer, ed. Horace: Epistles: Book I (Cambridge, Cambridge University Press, 1994), p. 132.

[75] Edward P. Morris notes (Horace: The Satires, New York, American Book Company, c1909, p. 129): "If a party to a suit failed to appear, his opponent could summon him and, calling upon a bystander to act as a witness, could take him by force into court."

[76] There is, however, the bad example that Tiresias gives to Ulysses, the legacy-hunter who professes his knowledge of the law to help his cause (Satires 2.5.33-37): *tibi me virtus tua fecit amicum; / ius anceps novi, causas defendere possum; / eripiet quivis oculos citius mihi quam te / contemptum cassa nuce pauperet; haec mea cura est, / ne quid tu perdas neu sis iocus.*

[77] The thought is echoed by Tacitus, Dialogus de Oratoribus 6, in a passage in which Aper lauds the employ of the lawyer, his prestige and the renown that comes from oratory.

[78] Mayer notes (p. 136) that "he was clearly a hard-working barrister." Wilkins observes that the *certamina divitiarum* probably refer to his clients' wealth, since the lex Cincia (204 B.C.) forbade advocates to be paid for their services (The Epistles of Horace, p. 121). Wilkins (p. 121) identifies Moschus as Volcacius Moschus "according to Porphyrion a famous rhetorician of Pergamum who was accused of poisoning, and in whose trial the most eminent orators of the day were engaged."

[79] Epistles 2.1.18-27.

CHAPTER 3

A MATTER OF JUDGEMENT: HORACE, JUSTICE AND CRIME

Aequum mi animum ipse parabo (Epistles 1.18.112). Horace, we have seen, approached the need for law and order in Roman society within the context of an ordered system of control, in which the legal system was founded on a hierarchical structure headed by the power and moral authority of Jupiter, followed by the wise rule of Augustus and supported, ultimately, by the moral goodness of individual Romans. Within this structure (which combines morality with authority) is a system of laws (about which Horace has very little to say specifically) which define criminal behaviour and its punishment (about which Horace has a great deal to say). But what is the relationship, for Horace, between "crime" on the one side and "punishment" on the other? Clearly, "justice" in some part means that there is a relationship between them that is "just" (i.e. the punishment "fits" the crime). But, how is this achieved? Horace's poems show that he approached the question from three discrete points of view, which may be summarized as follows:

[i] *With respect to the person who judges*: justice requires that the person who is involved in the judging of anything be as impartial as possible in order to render a just decision.

[ii] *With respect to crime*: justice requires that we consider and weigh factors pertaining to the perpetrator that make it possible to determine the degree of guilt or responsibility.

[iii] *With respect to punishment*: justice requires that we consider and weigh the relationship between the act committed and the punishment of it.

We should note immediately that Horace does not relate these considerations to any aspect of the statute law of Rome. What he is writing about is that amorphous, and mostly unwritten, part of the (Roman) law that deals with "equity", that is, about considerations that those involved in the legal process make when attempting to square the law with what is also just, whether because there is a "gap" in the law, or because a literal interpretation of it would produce an unjust result. Further, in Horace's case, as we will see, it may be defined as "virtue-equity", in that it presupposes a moral bias. Shiner writes of this approach as understood by Aristotle:

> Equity is the virtue shown by one particular kind of agent—a judge—when making practical judgements in the face of the limitations of one kind of practical rule—the hardened customs and written laws which constitute for some society that institutionalized system of norms which is its legal system.[1]

In this chapter we will examine two areas that pertain to the first half of the equation, namely, [i] the principles that Horace elaborates with respect to the rôle of the judge (which we take first, since the judgement of the person who judges applies to both the determination of crime and the appropriateness of the punishment), and [ii] Horace's

considerations concerning the judgement of "criminal" activity. Before looking at these subjects, however, it is appropriate to comment briefly on Horace and crime.

An enumeration of the specific "crimes" found in Horace's poems is beyond the scope of the present study (there are too many references to discuss in detail), but some general comments are appropriate. At one end of the scale are crimes against the gods, characterized by the extremes of violence against the established divine order. The foremost example, of course, is the mythical revolt of the Titans (the Gigantomachia) against the authority of Jupiter. It is depicted by Horace in Odes 2.19 and 3.4. Equally treasonable, in Horace's view, are Ixion's attempted rape of Hera, Jupiter's consort (Odes 3.11) and a plethora of lesser crimes against divine rule.[2] Closely related to these mythical offences against the gods are those perpetrated by the Roman people itself against the gods. While these are, strictly speaking, religious crimes, offences against *fas* rather than *ius—gens humana ruit per vetitum nefas* (Odes 1.3.26)—they are no less damaging to the Roman state and an important cause of its problems: *acerba fata Romanos agunt* (Epodes 7.17). Such crimes polluted the state for Rome's future generations: *sacer nepotibus* (Epodes 7.20). When Caesar was murdered, for example, the murderers desecrated the Regia, residence of the Pontifex Maximus, and the Temple of Vesta, because Caesar was Pontifex Maximus. This was thus a double crime—murder of the secular head of state (*maiestas*), as well as a religious crime against the religious head of Rome. The city of Rome, Horace claims, had committed many such sins (Odes 3.6).[3]

Translated into terms of offences against the Roman state, crimes against the authority of Jupiter and against individual gods would be comparable to those of

maiestas.[4] The Gigantomachia, for example, is an encounter with an unmistakable resonance in Roman political life, because of its associations with the Civil War and the end of the Republic. Closely related with this crime is the attempted division of Rome's power by Cleopatra and Anthony (Odes 1.37).[5]

Below the state crimes of treason and sedition are serious crimes against the person. These include various kinds of murder, most often illustrated by mythological examples. Here we find wives who kill their husbands on their wedding night (the Danaids, Odes 2.24, 3.11);[6] fratricide (Romulus killed Remus, Epodes 7); parricide by strangulation (Epodes 3.1-3, Odes 2.13.5f.);[7] infanticide as vengeance (Procne's murder of Itys, Odes 4.12); murder and theft (Epistles 1.2: *ut iugulent hominem, surgunt de nocte latrones*, v. 32); witchcraft (Epodes 5, 17, Satires 2.8, etc.);[8] and adultery (e.g. Satires 1.2, Odes 3.6, 3.16.43-44), which formed a focal point of Augustus' legislative agenda.[9]

We have looked briefly at a wide range of offences that carry severe penalties in Roman law for the guilty parties, from the penalty of death to exile (the mythological offences carried unique punishments).[10] At the other end of the spectrum are offences that are subject to the *ius civile*, namely, offences that do not entail punishment of the perpetrator as much as penalties that compensate the victim and attempt to restore what has been lost (i.e. the main difference between criminal and civil law).[11] Here Horace gives us offences such as infringements on land (the wealthy who encroach upon the ocean at Baiae do so legally but not morally) and the boundary markers of their neighbours (Odes 2.18: *quid quod usque proximos / revellis agri terminos et ultra / limites clientium / salis*

avarus? Pellitur paternos / in sinu ferens deos / et uxor et vir sordidosque natos, vv. 23-28);[12] bribery (Eriphyle is bribed by Polynices to arbitrate that her husband Amphiaraus should join in an attack on Thebes, Odes 3.16); fraud against partners and friends (e.g. Odes 3.24.59-62: *cum periura patris fides / consortem socium fallat et hospites / indignoque pecuniam / heredi properet*);[13] slander and libel (Epistles 2.1);[14] and the numerous culinary abuses of the sumptuary laws (e.g. Satires 2.2).[15]

These crimes (the list is by no means complete) cover all branches of Roman law, both public and private and (mythological examples aside) could form the basis of a legal action. This, of course, is not the end of the matter, as far as Horace is concerned. Apart from actions and behaviours that are legally wrong there are also those that are morally wrong in the eyes of society. Again, Horace's repertoire is too full to catalogue here and we must rely on samples. In Epodes 2, for example, we are presented with a lyrical hymn on the joys of idyllic country life. But in the closing verses we discover that the author of this paean is none other than the usurer Alfius! How sincere is Alfius' interest? Is this land (*paterna rura*) confiscated after the Civil War? Is it land used as surety for a loan? Is it land that Alfius has his eye on for himself? Horace does not tell us, but there is something unsavoury (not necessarily illegal) in Alfius' interests. The very ambiguity of the poem no doubt touched the nerves of those of Horace's contemporaries, who (like the poet himself) suffered from confiscation of land.[16] "Not necessarily illegal" also applies to the pursuit of legacies, a theme that Horace plays upon in all its variety. The lessons of Tiresias to Ulysses (Satires 2.5) show the range of possibilities, from wheedling one's way into the good graces of the prospective benefactor, to tolerating a sickly rival (*si quis*

casus puerum egerit Orco, / in vacuum venias, v. 49f.), to abject flattery (*scribet mala carmina vecors: / laudato*, v.74f.) to pandering (*scortator erit: cave te roget; ultro / Penelopam facilis potiori trade*, v. 75f.). And what else? There are those who chase after state contracts (tax farmers, Epistles 1.1.77: *pars hominum gestit conducere publica*), women and men who pursue old men and widows for their inheritances (*sunt qui / frustis et pomis viduas venentur avaras / excipiantque senes, quos in vivaria mittant*, Epistles 1.1.77-79) and others who put out their money at interest (*multis occulto crescit res faenore*, Epistles 1.1.80). Nothing illegal here! But, for Horace at least, morally inappropriate.

The judgement of crime, as noted, may be divided into two aspects: on the one hand are the qualities and character of the judge that Horace considered important; on the other hand are matters that a judge should take into account as part of the process of judging. We will examine each aspect in turn, beginning with Horace's thoughts on the character and rôle of judges.

[a] Judicial Impartiality

One of the most important aspects of justice is the impartiality or even-handedness of the person who makes a judgement . This includes not only the equal or equitable treatment (how these terms are defined is another question) that a person shows with respect to others, but the impartiality of the person's thought processes and attitudes. In judicial terms, the mind must be able to weigh facts and to do so fairly implies that the fulcrum on which it turns lacks any impediment. Gellius gives an example of his own experience as a judge when he recognized his conflict of interest: *"Sed enim ego homines*

cum considerabam, alterum fidei, alterum probri plenum spurcissimaeque vitae ac defamatissimae, nequaquam adduci potui ad absolvendum." [17] Gellius' dilemma as a judge, when confronted with a claimant who was a man of *bona fides* (but with a poorly witnessed and evidenced case) and with a defendant who was a scoundrel, indicates one kind of prejudice that may affect a judge's reasoning.[18] Gellius simply could not bring himself to disregard the issue of the morality of the claimant and the defendant and focus on the real issue in the case—money. In the end he excused himself from the case on the grounds of poor knowledge of the law and limited experience:[19] *ut absolverem tamen inducere in animum non quivi et propterea iuravi, mihi non liquere, atque ita iudicatu illo solutus sum* (Noctes Atticae 14.2.25).[20] The example is one of *gratia*, the conflict that arises from the sympathies of common background, allegiance and values. But there are other influences. Cicero identified three specific factors that could shackle a judge's discretion: *quod enim est ius civile? Quod neque inflecti gratia neque perfringi potentia neque adulterari pecunia possit.*[21]

Cicero's impediments include *gratia* (favour, which also includes the reciprocal obligations of *amicitia*), *potentia* (power, or the sense of being subordinate to one with greater authority), and *pecunia* (judicial bribery). These impediments to justice are clearly challenges to the character of a judge. Of these threats to judicial integrity, two find a place in Horace's poems, namely, *pecunia* and/or *gratia*.[22] However, since the third, *potentia*, implies either (or both of) *pecunia* and *gratia*, for practical purposes we may say that Horace concurs closely with the Ciceronian view of judicial impairments.

Horace held the sense or ability of judgement in the highest regard (we recall that he advised that one should keep an "equal" mind even in difficult circumstances; *aequam memento rebus in arduis / servare mentem*... Odes 2.3.1f.), a sentiment that applies whether in the legal sense or in terms of the judgement of friends and acquaintances. His patron Maecenas had this judgement (though, of course, here it is to Horace's advantage!): *...magnum hoc ego duco, / quod placui tibi, qui turpi secernis honestum / non patre praeclaro, sed vita et pectore puro* (Satires 1.6.62-64). And Horace refers to Albius (Tibullus?) as an impartial judge of his satires: *Albi, nostrorum sermonum candide iudex* (Epistles 1.4.1); Albius, who strolls through the woods "*curantem quidquid dignum sapiente bonoque est*" (v. 5) and knows how to handle his wealth and good looks judiciously.[23] The consul Lollius, however, memorialized by Horace in Odes 4.9, combines all the wise (*prudens*), well-intentioned (*animus*) and moral (*rectus*) qualities that a consul and judge should have, according to Cicero's definition, qualities that specifically exclude bribery:[24]

> *...est animus tibi*
> *rerumque prudens et secundis*
> *temporibus dubiisque rectus,*
> *vindex avarae fraudis et abstinens*
> *ducentis ad se cuncta pecuniae,*
> *consulque non unius anni,*
> *sed quotiens bonus atque fidus*
> *iudex honestum praetulit utili,*
> *reiecit alto dona nocentium*
> *vultu, per obstantis catervas*
> *explicuit sua victor arma.*
>
> (Odes 4.9.34-44)

As Horace depicts him, Lollius is more than Lollius;[25] he is also the representation of the *animus* of the person who, rejecting *pecunia* and the bribes of those he has found guilty (probably the wealthy and powerful, if they attempt to buy his favour), is prepared to take on whatever his legal or military opponents may bring against him. His character and behaviour reflect everything that we would expect from a man who has reached (more than once) the *dignitas* of the consulship. In fact, Horace implies, he could not have reached so high without being *bonus* and *fidus* (a circular argument: he was successful because of his qualities, and his success proves his good character).[26] Putnam neatly sums up the inner values, the idealized substance of the consul/iudex that is captured in the person of Lollius:

> As an effective jurist, a judge of both immediate and long-term high-minded intentions, he deploys his armoury so as to rout victoriously the opposing squadrons... In the case of Lollius, legal and moral victories are one and the same, and the public manifestation of justice is only an aspect of the judicious *animus* at work.
>
> It is not Lollius the noteworthy jurist or even his conduct itself which receives Horace's panegyric, but his *animus*, the spirit that makes him a Stoic sage, whatever the ethical choices before him. Lollius' intellectual well-being provides the vital part that for the poet defines the whole. But the personification of the protagonist's *animus* becomes a special, nearly abstract form of *consul* and *iudex*.[27]

The opposite of Lollius, then, or of Maecenas, must be the judge who has been corrupted and examines truth badly because of it: *...male verum examinat omnis / corruptus iudex* (Satires 2.2.8f.). Horace follows the sentiment with a portrait of the gourmand that shows us the man who has no taste, no discernment of any value on account of what, from gluttony and self-deception, he believes fine dining to be. Equally bad must be judgement made in anger. Here it is Jupiter himself, who, in his haste to

punish, may inadvertently harm the innocent as well as the guilty, and so Horace is reluctant to let someone who has "profaned the sacred rites of arcane Ceres" shelter under his roof (in case he is struck down too, although an innocent bystander):[28]

> *...saepe Diespiter*
> *neglectus incesto addidit integrum...*
>
> (Odes 3.2.29f.)

The *incestus* appears in the following Ode (Odes 3.3.18-20): Juno recalls that Troy fell because of the *incestus iudex* and a "foreign woman." And what is one to think of the *iuris consultus* Galba, an adulterer who feared for his manhood (Satires 1.2): hardly an upstanding example of the legal profession. Gellius realizes his conflict and excuses himself from a case. Horace, on the other hand, shows us the man in the Forum who shouts out one thing, while whispering something quite different under his breath. His external, public rites are different from his private wishes. The conflict is effectively hidden, although the man is supposedly, in the eyes of the world, a *vir bonus*:

> *vir bonus, omne forum quem spectat et omne tribunal,*
> *quandocumque deos vel porco vel bove placat,*
> *"Iane pater!" clare, clare cum dixit, "Apollo!"*
> *labra movet metuens audiri: "pulchra Laverna,*
> *da mihi fallere, da iusto sanctoque videri,*
> *noctem peccatis et fraudibus obice nubem."*
>
> (Epistles 1.16.57-62)

Judges, then, may be good or bad. And the goodness or badness may be hidden from view. This is one of the problems that beset the judge when he must appraise the

character of others. It is part of the larger problem, which we may now consider, namely, that of distinguishing truth from appearance.

[b] Judicial Considerations

It is not enough for the person judging to be *rectus, bonus*. A judge must also have a knowledge of how to judge, i.e. knowledge of the tests and considerations that such a person applies to reach a judgement. There is no doubt that Horace's description of Lollius, which brings out the same kinds of qualities as those he attributes to a hero such as Regulus (Odes 3.5.41ff.), represents his idealized view of the personal integrity and balance required in those whose job it is to judge others justly.[29] Having said this, however, the *iudex* must have a way of considering the facts, the evidence, or the character of those before him, and the way must itself be as fair and balanced as it can, if it is to be just. Plato, in the Gorgias (523C-524A), cites, through Socrates, Zeus' instructions that Aeacus and Rhadamanthys, two of the judges in the Underworld, should be naked when they judge the souls of the dead and that the latter should also be naked. Only in this way can soul look at soul without hindrance and prejudice and the judgement be just. The instruction raises two points:

> [i] clothes (or any possession) are inherent indicators, e.g. of wealth, poverty, profession, status, etc.
>
> [ii] possession of such objects transfers that indicator of wealth, poverty, profession or status, etc. from the objects to the possessor.

Explicit in this instruction is Zeus' concern that Aeacus and Rhadamanthys not be misled by those who intentionally attempt to deceive them, i.e. where clothes are used as a

disguise. But, it is more than this: Zeus is clearly intent on removing any bias either to or on the part of the judge that results from the judge's own clothing (i.e. through its effect on the person being judged, as well as on the judge). Going as far as Aeacus and Rhadamanthys to arrive at the truth was not to Horace's taste (although, as he tells us in Odes 2.13.21f.,[30] he was within a whisker of experiencing such an encounter at first hand), but the philosophy behind Socrates'/Zeus' method was one with which he could agree, namely, the importance of understanding the appearance of things and of differentiating between external and internal qualities. There are two possibilities:

> [i] That the external appearance, or the way something is presented, is in agreement with the internal reality, i.e. what it is; and
>
> [ii] That the external appearance, or the way something is presented, is not in agreement with the internal reality.

The connection between "appearance" and the underlying substance is at the heart of the issue, as far as Horace is concerned. If something appears to be as it in fact is, then well and good. However, where there is a discrepancy, there is the possibility of some immoral condition, or even crime (*fraus*, fraudulent behaviour). Some examples.

[i] Things as they Seem

Horace shows respect for persons and things being shown and appearing as they really are. Such behaviour is open and honest (whether it is moral or not is beside the point). In Epistles 2.2.1-19, for example, Horace recounts to Florus the sale of a slave. The sale is as sales should be, according to Roman law: open and above board. The seller (who was legally obliged to declare any defect in his wares, although he might *malo dolo*

choose not to), has nothing to fear from the law, because he makes known to the purchaser all the features of his merchandise, including the slave's "faults."[31] The seller's words have a heavy legal flavour, consistent with the technicalities of the sale (note also the emphasis on the "prudent" man, the man who judges for himself wisely):[32]

> *"semel hic cessavit et, ut fit,*
> *in scalis latuit metuens pendentis habenae.*
> *des nummos, excepta nihil te si fuga laedit."*
> *ille ferat pretium poenae securus, opinor.*
> *Prudens emisti vitiosum; dicta tibi est lex:*
> *insequeris tamen hunc et lite moraris iniqua?*
>
> (Epistles 2.2.14-19)

If you have such disclosure, Horace asks, how can you launch what amounts to unjust litigation against the seller (an action that would be illegal itself as a form of harassment—*calumnia*)?[33]

A similar approach is found in Satires 1.2, in which Horace considers excess, including the excesses that may come from the pursuit of both adulterous relationships with Roman *matronae* and sexual liaisons with prostitutes. The message is not only a moral one, however, since there is the legal issue of adulterous affairs with matrons, or actions that interfere with the chastity of a respectable woman (D.47.10.15.22). These actions entail serious penalties such as those that Horace details graphically (vv. 37-46) as a warning to philanderers. Even Galba, the *iuris consultus* and an adulterer, must have shuddered in refusal (*"iure" omnes: Galba negabat*, v. 46) at the thought that *quin etiam illud / accidit, ut quidam testis caudamque salacem / demeteret ferro* (vv. 44f.). But there is another point. The whore, unlike the *matrona* or unmarried Roman woman,

honestly and openly displays her wares; she leaves nothing to imagine, nothing to stir the desire to know what lies beneath her clothes and jewellery:

> *...atque etiam melius persaepe togatae est.*
> *adde huc quod mercem sine fucis gestat, aperte*
> *quod venale habet ostendit, nec, si quid honesti est,*
> *iactat habetque palam, quaerit quo turpia celet.*
>
> (vv. 82-85)

> *altera, nil obstat; Cois tibi paene videre est*
> *ut nudam, ne crure malo, ne sit pede turpi*
> *metiri possis oculo latus.*
>
> (vv. 101-103)

Morality, then, is not the only issue. It is also a question of presenting what people or things are in an honest, open fashion.

We have already noted the case of the *iudex* who addresses the Forum in one way (Epistles 1.16.57-62), while at the same time praying under his breath that he not be found out--a clear case of the difference between the audible and the inaudible, the visible and the invisible. We have noted too in the same poem the very real gap between the man who only appears to be a *vir bonus* (Epistles 1.16.40-43), but who does not fool family or neighbours (vv. 44-45):

> *sed videt hunc omnis domus et vicinia tota*
> *introrsum turpem, speciosum pelle decora.*

The *matrona* and the respectable Roman freedwoman also can be guilty of deception. Unlike the prostitute, the well-accoutred, well-heeled woman can use her clothes and jewellery to conceal her faults, the realities (*verum*) of her appearance.

Underneath are her less favourable points: *depugis, nasuta, brevi latere ac pede longo est* (Satires 1.2.93). Such a woman is hidden, head to toe: *matronae praeter faciem nil cernere possis* (v. 94). Far better to stay clear of such women:

> *...quare, ne paeniteat te,*
> *desine matronas sectarier, unde laboris*
> *plus haurire mali est quam ex re decerpere fructus.*
> *Nec magis huic inter niveos viridisque lapillos--*
> *sit licet hoc, Cerinthe, tuum-- tenerum est femur aut crus*
> *rectius...*
>
> (vv. 77-82)

The clash between the external and the internal is most pointed in Epode 4, a poem in which Horace is personally stirred by what he sees as an abuse of the toga, the symbol of privilege and Roman citizenship.[34] Here Horace angrily attacks a former slave (or captive), an upstart (a type,[35] rather than a person), still scarred with the marks of his shackles, who has the nerve to strut proudly through Rome, a man of means, wrapped, almost swathed in the toga. Does he not see the indignation of passers-by?:

> *videsne, Sacram metiente te Viam*
> *cum bis trium ulnarum toga,*
> *ut ora vertat huc et huc euntium*
> *liberrima indignatio?*
>
> (vv. 7-10)

Here, of course, the "deception" (the man who is apparently posing above his social station, rich, but still of the social origins to which he was born—*Fortuna non mutat genus* [v. 6]) is transparent; the marks of slavery are plainly visible, an undisguised flaw, not covered over as may be the blemishes and faults of a *matrona*. But we can look at it from another point of view. Horace is making his judgement on the basis of what he sees,

not what he knows (if he is depicting a "type" of upstart in the turbulent political conditions of the mid-30's, he cannot possibly base his view on specific details). How, for example, did he merit those shackles and marks of the Spanish rope? Was he captured in the war against Pompey? Was he a deserter? On which side had he fought? Was he a slave who had been manumitted? A criminal or slave scourged by the triumvirs?[36] Horace does not give an answer. Perhaps the marks of imprisonment or slavery are visible because the owner wears them with pride? Or disinterest? The point is that Horace makes judgements based only on appearances.

What can be done to help distinguish appearance from reality? Horace provides one technique, a technique that features, once more, the use of clothes (or in this case coverlets). To find a fault or defect requires that we cover up the comely, the shapely, in the same way that the rich buy a horse:

> *regibus hic mos est: ubi equos mercantur opertos*
> *inspiciunt, ne, si facies ut saepe decora*
> *molli fulta pede est emptorem inducat hiantem,*
> *quod pulchrae clunes, breve quod caput, ardua cervix.*
> *Hoc illi recte...*

(Satires 1.2.86-90)

The subtle difference that Horace points to is intent. On the one hand, the *matrona* (the seller) uses dress to hide a flaw. On the other hand, the buyer must conceal the good to mark the bad (not that the seller is necessarily hiding anything;[37] the buyer may be distracted by the horse's good points, that is, by his own biases and perceptions) . One action aims at deception, the other to expose a fault. This is the lesson of *caveat emptor*, the responsibility that lies with the buyer to exercise due diligence. In effect, a crime is

mitigated, if the person who is tricked or duped makes little or no attempt to consider what he is getting into: *an tibi mavis / insidias fieri pretiumque avellier ante / quam mercem ostendi?* (vv. 103-105).

We have considered what Horace holds important about external appearances and the assumptions that can be based on them. How we observe, he tells us, is influenced both by what we are looking at and also by our own prejudices, greed, avarice, sexual desire, lust, etc. These personal desires and interests fashion what we observe (because we consciously or subconsciously select those features that appeal), how we observe (through our attitudes), and the judgements we make. This is one way of interpreting observations. However, there is another consideration, which we will now explore, that must be taken into account, namely, the part played by Nature and habit.

[ii] The Nature of Things

Horace observes that we must also base our judgement on consideration that things are as they are because of their nature or from simple habit. He writes:

> *...denique te ipsum*
> *concute num qua tibi vitiorum inseverit olim*
> *natura aut etiam consuetudo mala; namque*
> *neglectis urenda filix innascitur agris.*
>
> (Satires 1.3.34-37)

Natura aut etiam consuetudo mala. That Nature fashions things differently, and gives them different appearances, forms a central theme in Satires 2.2. Horace observes, through the mouth of Ofellus, that [a] species of birds (a peacock and chicken are our examples) and fish (a pike, a mullet) are inherently different, and [b] within species, there

are differences in size, weight, etc: *quia scilicet illis / maiorem natura modum dedit, his breve pondus* (vv. 36f.). But, for the gourmet, who is deceived by his own taste for what is rare or expensive, and for the gourmand, who is drawn to size or weight (*porrectum magno magnum spectare catino / vellem*, v. 39f.), the difference lies not in what Nature provides, but in the values that are imposed on them:

> *corruptus vanis rerum, quia veneat auro*
> *rara avis et picta pandat spectacula cauda;*
> *tamquam ad rem attineat quicquam. Num vesceris ista*
> *quam laudas pluma? Cocto num adest honor idem?*
> *Carne tamen quamvis distat nil, hac magis illam*
> *imparibus formis deceptum te petere!*
>
> (vv. 25-30)

Horace and Ofellus are arguing that on moral grounds it is inappropriate to either [a] select the rare, the expensive or the exotic instead of the common, everyday fare, or [b] to pick out the largest or heaviest specimen.[38] The cheaper, plain fowl or fish are just as good. But there is a lesson also in judgement, in that Horace implies that Nature makes the appearance of things different, not the substance. And when Horace notes that the gourmand must cut his three pound mullet into smaller portions to eat it (*laudas, insane, trilibrem / mullum, in singula quem minuas pulmenta necesse est*, v. 33f.), effectively producing portions comparable in size to those that would be made from smaller fish, he introduces the concept of commensurateness: when things are considered in a way that removes differences in size, weight or other characteristics, Horace implies, then they may be judged fairly and equitably. This approach levels distinctions made by Nature.

Quid tu? / Nullane habes vitia? (Satires 1.3.19f.). Horace reminds us that Nature itself creates flaws (Satires 1.3), and this leads to an important lesson in how judgements should be made. Basic to the thought is that [a] everyone has faults (*optimus ille est / qui minimis urgetur*, vv. 68f.), and that [b] when judging others, we tend to see our own shortcomings less sharply than those of the person we judge:

> *Cum tua pervideas oculis mala lippus inunctis,*
> *cur in amicorum vitiis tam cernis acutum*
> *quam aut aquila aut serpens Epidaurius?*
>
> (vv. 25-27)

Horace gives us another variation of the problems posed by perception. Here it is the blindness of the judge to his own faults (as the lover to his beloved—*illuc praevertamur, amatorem quod amicae / turpia decipiunt caecum vitia*, v. 38f.). This personal blindness could clearly fetter a judge's discretion. The context is that of friendship (the reciprocal excusing of faults), but its logic, symbolism and language is that of the courts, of the process of weighing and considering evidence. Once the friend (we may read "judge") is aware of his own faults, his perception of the other's blemishes (and vice-versa) is fair (*ut aequum est*, v. 69). At this point it is a question of balancing good against bad, remembering to adjust the scales to allow for the "warts" and "pimples" on both sides:

> *...amicus dulcis ut aequum est*
> *cum mea compenset vitiis bona, pluribus hisce,*
> *si modo plura mihi bona sunt, inclinet, amari*
> *si volet: hac lege in trutina ponetur eadem.*
> *Qui ne tuberibus propriis offendat amicum*
> *postulat, ignoscet verrucis illius; aequum est*

peccatis veniam poscentem reddere rursus.

(vv. 69-75)

Horace's idea that everyone is flawed, which echoes the Stoic notion that everyone is mad (which we will consider in detail in a moment), has interesting possibilities for the philosophy of law. It suggests, for example, that [a] vice (and from vice, criminality) is an inherent characteristic of man (and so Jupiter can never really put aside his thunderbolts); [b] because of this inherent flaw, judgement and hence justice must also be flawed (or possibly so); and [c] guilt is mitigated, because man cannot be accountable if he is not responsible.

[iii] Mental Competence

If there are flaws in the human character, put there by Nature, then there can be flaws of the mind and (it follows) these flaws have an affect on crime and criminal behaviours. The "sanity" of the person is thus relevant to the responsibility and accountability of that person (a major factor in modern legal theory).[39] Roman law, surprisingly, has little to say on the relationship between crime and the mental condition of the perpetrator, and what it does say is limited mainly to questions of guardianship that arise when an individual is incapable of managing his own affairs.[40] Horace comments: *interdicto huic omne adimat ius / praetor et ad sanos abeat tutela propinquos* (Satires 2.3.217f.). Although in practice the insanity of an accused may have been evident, it probably had no impact on his or her guilt or innocence and none on the punishment—

which was normally invariable. Insanity and its relationship to justice was, however, a subject of keen interest to Horace

Viewed broadly, Horace's "eclectic" philosophy, which seems to combine elements of Stoicism and Epicureanism as well as other schools of thought, is founded on the need for personal and social control. There is always the need to retreat from extremes, from excess, because to indulge in anything excessively (whether physical pleasures on the one hand or the evils of avarice, ambition, or greed on the other) is to lose control, to be enslaved. The trick is to live carefully balanced between the extremes, (but not like the Stoic sage).

One opposite of self-control (perhaps the extreme form of lack of control) is madness, a subject that Horace alludes to in several passages and deals with at length in Satires 2.3, in which he attempts to parody the "Stoic paradox" (i.e. that madness is the opposite of wisdom). The Stoic view, which Horace presents in Satires 2.3 (purportedly the views of the Stoic Stertinius as reported by his student Damasippus), is simply that all men are mad:

> *Quem mala stultitia et quemcumque inscitia veri*
> *caecum agit, insanum Chrysippi porticus et grex*
> *autumat. Haec populos, haec magnos formula reges,*
> *excepto sapiente, tenet.*
>
> (vv. 43-46)

Stertinius proceeds, through examples, to show that, while all are mad, there are different reasons and causes, including such (familiar Horatian) excesses as desire, ambition, extravagance, superstition, as well as undefined "other mental disorders" (*alio mentis morbo*, v. 80).[41] The excesses can be either positive (too much of something) or

negative (too little through denial and abstinence). *Nil agit exemplum, litem quod lite resolvit* (v. 103), Stertinius claims: one kind of madness cannot be contested by another, that is, the man who hoards his wealth cannot be judged sane by the example of the man who dumps his gold in order to travel faster (*qui servos proicere aurum / in media iussit Libya, quia tardius irent / propter onus segnes*, vv. 100-102). If a madman borrows money, how much more mad is the man who lent it to him. He would be laughed out of court!:

> *Cum rapies in ius malis ridentem alienis,*
> *fiet aper, modo avis, modo saxum et, cum volet, arbor.*
> *Si male rem gerere insani est, contra bene sani,*
> *putidius multo cerebrum est, mihi crede, Perelli*
> *dictantis, quod tu numquam rescribere possis.*
>
> (vv. 72-76)

At the heart of the discussion, however (and of most interest to us), is madness and criminal behaviour. The issue that Horace presents is the difference, if any, between [a] the madman who commits crime—the example is that of Ajax, who from madness slew sheep, believing them to be Ulysses, Menelaus and Agamemnon;[42] and [b] the man who commits a crime on the basis of what he considers rational arguments—the example here is that of Agamemnon, who "offers up his daughter" (*si quis gnatam pro muta devovet agna*, v. 219):[43] *verum ego* (says Agamemnon, vv. 205-206) *ut haerentis adverso litore navis / eriperem, prudens placavi sanguine divos*. In the first case, says Stertinius, is someone who from anger and folly (*stultitia*) confuses what is real and what is not:

> *Qui species alias veri scelerisque tumultu*
> *permixtas capiet, commotus habebitur, atque*

stultitiane erret nihilum distabit an ira.

(vv. 208-210)

In the other, Stertinius observes, we have "perverse folly" (*prava stultitia*), i.e. criminal stupidity, that is also insane:

> *Cum prudens scelus ob titulos admittis inanis,*
> *stas animo et purum est vitio tibi, cum tumidum est, cor?*
> ... ...
> *...ergo ubi prava*
> *stultitia, hic summa est insania; qui sceleratus,*
> *et furiosus erit.*
>
> (vv. 212-213, 220-222)

From a Stoic point of view, there are different causal elements, but the effect is the same, i.e. an Agamemnon is as mad, and as criminal, as an Ajax. However, it is not only a question of being mad. Horace, through Stertinius, poses the question whether insanity precedes a criminal act, or flows from it. The example is that of Orestes. Did the Furies drive him to murder, or pursue him for it afterwards?[44] And Marius, who killed his girlfriend and then committed suicide, was he insane? For Stoics it would not make a difference: the question of sanity would lie on one side (sane or insane?), and criminal guilt on the other (guilty or not?). As Horace writes, being found sane or insane on the first point would not change the verdict on the second: *an commotae crimine mentis / absolves hominem et sceleris damnabis eundem, / ex more imponens cognata vocabula rebus?* (vv. 278-280).

In Satires 2.3 Horace parodies the Stoic approach to madness. There is no reason to think that he agreed with its principles that crime is madness by definition, or that the

relationship between different forms of madness and crime is ultimately unimportant. But his treatment of the subject raises important issues for the judgement of crime, in that it addresses the almost incalculable questions of personal responsibility and guilt.

We may conclude our consideration of Horace's approach to the judgement of crime by looking at a passage in the Ars Poetica in which Horace illustrates succinctly all its difficulties. Horace gives us the example of the man who falls into a pit (in this case, a crazy poet, *vesanum...poetam*):

> *hic, dum sublimis versus ructatur et errat,*
> *si veluti merulis intentus decidit auceps*
> *in puteum foveamve, licet "succurrite" longum*
> *clamet "io cives!" non sit qui tollere curet.*
> *Si curet quis opem ferre et demittere funem,*
> *"qui scis an prudens huc se deiecerit atque*
> *servari nolit?"...*
>
> *...sit ius liceatque perire poetis.*
> *invitum qui servat idem facit occidenti.*
>
> (Ars Poetica 457-463, 466-467)

All the ingredients for the dilemmas posed by judgement are here: objectively, Horace shows us a man in a pit or well who is crying for help. But this is only the appearance of things. There are other considerations: [a] What is his state of mind? The poet is known to be a bit crazy, and has done this before (*nec semel hoc fecit*, v. 468); [b] What is his motive? How did he get into the difficulty? Did he innocently fall in? Or, did he, in full control of his faculties (*prudens*, v. 462), jump in, as Empedocles jumped into Mt. Etna to immortalize himself? (*deus immortalis haberi / dum cupit Empedocles, ardentem frigidus Aetnam / insiluit*, Ars Poetica 465-467); [c] does he really want to be

saved? Finally, the paradoxical outcomes: to let the fellow die, or, perhaps, *murder* him by saving him. And, if he is saved, he may, like a leech, "read people to death" (*tenet, occiditque legendo*, v. 475).

This short passage, taken from the closing lines of the Ars Poetica, is one of the few passages in which Horace presents us with a complete (mini) "trial." We have a plaintiff (or defendant, i.e. the poet), a set of facts and circumstances, a "judge", i.e. the bystander, and possible outcomes. The case seems simple, but the issues are clearly complex. In this case, Horace leaves us guessing about the outcome. No matter what the bystanding judge does, it may turn out badly.

As we have seen, Horace assigns particular responsibility to those involved in the process of judgement, whether in terms of everyday life or in the more technical areas of law. A judge (the person judging) should be a *vir bonus*. But at the same time Horace recognizes that the judge may be influenced by personal biases as well as by his own powers of perception. Central to the problem is the need to distinguish between things as they appear, and things as they are, and, far more difficult, to appreciate differences in mental conditions (sanity and insanity as factors in crime). Keeping these broad principles of judgement in mind, we may now proceed to consider Horace's approach to the connection between crime and its punishment.

---

[1] Roger A. Shiner, "Aristotle's Theory of Equity" (in: Justice, Law and Method in Plato and Aristotle. Ed. by S. Panagiotou. Edmonton, Academic Printing and Publishing, c1987), p. 187. For a general overview of equity in Roman law, see Michele Ducos, Les Romains et la Loi (Paris, Les Belles Lettres, 1984), pp. 303-338.

[2] For example, the mythological challenges to divine power or knowledge: Prometheus stole fire *fraude mala* (Odes 1.3.27f.); Daedalus attempted flight on "wings not given to man" (*pennis non homini datis*, Odes 1.3.34f.); Laomedon tried to cheat the gods of their pay (Odes 3.3.21-22); Pentheus attempted to prevent worship of Bacchus (Odes 2.19.14-16)—particularly sensitive, because Bacchus had defended Jupiter against the Titans (vv. 21-24); Tityus' attempt against Leto (Odes 2.14, 3.11).

[3] *Damnosa quid non imminuit dies? / aetas parentum, peior avis, tulit / nos nequiores, mox daturos / progeniem vitiosiorem* (Odes 3.6.45-48).

[4] A public offence covered by statute—*lex Julia maiestatis*, passed in the time of Julius Caesar. Earlier legislation applicable to state crimes included the *lex Cornelia de sicariis et veneficiis* (on assassins, c. 80 B.C.) and the *lex Lutatia* (which allowed a *quaestio perpetua* for sedition). For legislation against *maiestas* towards the end of the Republic, see Lintott, pp. 107-124.

[5] *Antehac nefas depromere Caecubum / cellis avitis, dum Capitolio / regina dementis ruinas / funus et imperio parabat / contaminato cum grege turpium / morbo virorum...* (Odes 1.37.5-10). Note the use of *nefas*, which connects the crime with religious sin.

[6] *Impiae--nam quid potuere maius?-- / impiae sponsos potuere duro / perdere ferro* (Odes 3.11.30-32).

[7] *Parentis olim si quis impia manu / senile guttur fregerit...* (vv. 1f.). Mankin observes (p. 89) that Horace is parodying a legal formula (note the use of the future perfect, *fregerit*). The *lex Pompeia de parricidiis* (c. 52 B.C.) provides for offences connected to the murder of blood relatives.

[8] See, for example, Kirk Freudenburg, "Canidia at the Feast of Nasidienus (Hor. S. 2.8.95)," Transactions of the American Philological Association 125 (1995), pp. 207-19.

[9] Adultery was made a criminal offence by Augustus (*lex Julia de adulteriis*, c. 18 B.C. See, for example, Karl Galinsky, "Augustus' Legislation on Morals and Marriage," Philologus 125 (1981), pp. 126-144; Synnove des Bouvrie, "Augustus' Legislation on Morals: Which Morals and What Aims?" Symbolae Osloenses 59 (1984), pp. 93-113.

[10] Kunkel, p. 61f.

[11] The difference is expressed succinctly by Hunter, p. 905: "The true distinction between crime and civil wrong is to be found in the remedy that is applicable. The aim of the Civil Law is to give redress to a sufferer, in the form either of restitution or of compensation. The aim of the Criminal Law is punishment." Some offences may be both criminal and civil.

[12] How different from Horace, who invites Faunus to cross his property (Odes 3.18.2f.). Note that the perpetrator not only commits a criminal act, he also offends the gods (*deos*), who are also forced to leave. Crook observes (p. 147): "Overwhelmingly the most important kind of property in the Roman world was land. It was upon the rents of that land that a man must live if he was to cut a respectable figure in the community." Some incursions were necessary. Crook (p. 149): "A certain inroad upon ownership was made

by those very necessary sets of rights...rights of way and water are the characteristic cases—the right to go across someone's property or drive a cart or cattle over it."

[13] Fraud could be a capital offence. As Wilkins states (p. 267): "A provision of the XII Tables made this a capital offence in the case of a client: *patronus si clienti fraudem fecerit, sacer esto*. Condemnation in an action pro socio involved *infamia*."

[14] In Epistles 2.1 Horace begins with a history of *mala carmina*, which in the *Fescennina licentia* (vv. 145f.) reached such heights that laws were instituted: *quin etiam lex / poenaque lata, malo quae nollet carmine quemquam / describi: vertere modum, formidine fustis / ad bene dicendum delectandumque redacti* (vv. 152-155). Wilkins notes (p. 271): "The first law enacted as to *mala carmina* was that passed by the decemvirs in the Twelve Tables...There was in the time of Horace a further *lex Cornelia*, passed by Sulla in B.C. 81, *de iniuriis*, which included libellous publications..."

[15] Rudd comments (The Satires of Horace, p. 163): "In 181 B.C. the *lex Orchia* placed a limit on the number of guests allowed at dinner. Twenty years later the *lex Fannia* decreed that on ordinary days a dinner should cost no more than ten asses, and on special occasions like the *Ludi Romani* and the *Saturnalia* a hundred. Towards the end of the century the *lex Licinia* raised the ordinary daily figure to thirty asses." These and other pieces of legislation were eminently ineffectual, because there were so many ways of avoiding their provisions. For an analysis of Satires 2.2, see Rudd, pp. 161-173.

[16] D'Alton explains (p. 159): "Between the encroachments of the rich and the confiscations that followed the Civil Wars, the tenure of property must have been regarded by many as insecure (cf. Satires 2.2.129-133). Twice at least, Horace raises the question of property rights, and seems to express in these passages the general feeling of insecurity among his contemporaries (Satires 2.2.114)...we can appreciate the anxiety (Satires 2.6.55) of the public to know whether Augustus after the battle of Actium would settle his veterans in Italy or Sicily...Horace raises the whole question of property rights again (Epistles 2.2.158f.), some years later, in the Epistles."

[17] Aulus Gellius, Noctes Atticae 14.2.10.

[18] Cf. Tacitus, Dialogus de Oratoribus 5. Secundus states: *ego non...antequam me iudicem Aper recuset, faciam quod probi et moderati iudices solent, ut in iis cognitionibus excusent in quibus manifestum est alteram apud eos partem gratia praevalere.* See also Geoffrey MacCormack, "The Liability of the Judge in the Republic and Principate," Aufstieg und Niedergang der römischen Welt, Berlin, de Gruyter, 1982. Band II. 14, pp. 3-28.

[19] The case is discussed by Peter Garnsey, Social Status and Legal Privilege in the Roman Empire (Oxford, Clarendon Press, 1970), p. 210f.

[20] Gellius consulted Favorinus, who cited the advice of Marcus Cato, namely, that: *ut si quod inter duos actum est neque tabulis neque testibus planum fieri possit, tum apud iudicem qui de ea re cognosceret, uter ex his vir melior esset quaereretur et, si pares essent seu boni pariter seu mali, tum illi unde petitur crederetur ac secundum enim iudicaretur* (Noctes Atticae 14.2.21). But in this case Favorinus advised that the claimant should get the verdict, not the one on whom the claim was made (14.2.23): *eas igitur et*

credas ei qui petit, condemnesque eum de quo petitur, quoniam, sicuti dicis, duo pares non sunt et qui petit melior est. Gellius could not accept this advice.

[21] Cicero, Pro Cluentio 73. Quoted by Peter Garnsey, p. 207.

[22] Horace addresses several of his epistles to the issues involved socially for the man of ambition who must learn how to manipulate his way in Roman society and how to maintain independence in the face of wealth, prestige and power. See R. G. Mayer, "Horace's Moyen de Parvenir" (in: Homage to Horace: A Bimillenary Celebration. Ed. by S. J. Harrison. Oxford, Clarendon Press, 1995, pp. 279-295).

[23] See Ross S. Kilpatrick, The Poetry of Friendship: Horace, *Epistles I* (Edmonton, University of Alberta Press, c1986), pp. 56-61.

[24] As Wm. A. Hunter states, p. 907: "Corrupting a judge, or causing him to be corrupted, was punishable under the *lex Cornelia de falsis* (D. 48.10.21)." Conversely (p. 795): "*A fortiori*, the *iudex* was liable for damages if he acted in bad faith (*dolo malo*), and gave judgement through favour, animosity, or bribery (D. 5.1.15.1)." The *lex Cornelia* was instituted c. 81 B.C.

[25] Not everyone agrees that the portrait of Lollius is felicitous. Robin Seager, p. 37, observes that "Horace can have felt little enthusiasm for the task of rehabilitating Lollius after his defeat in 16, a commission that was probably imposed on him by Maecenas." Seager (p. 37) calls the poem a "whitewashing job," and "the poet's deliberate tactlessness ensures that the reader does not miss the point...in the course of some twenty lines of "encomium" Horace succeeds in twice ramming it down the honorand's throat that he has neither been victorious in battle nor died in the attempt." This criticism is perhaps unfair. If there is some bitterness towards Lollius on account of his failure, it may be self-directed and a twinge of conscience that he too had fled the battlefield. If Lollius is a better judge and consul than fighter, perhaps Horace is a better poet than soldier. If there is a message, it may be that being a good judge, poet or consul does not make a good soldier. John W. Ambrose, "The Ironic Meaning of the Lollius Ode" (Transactions of the American Philological Association 96 [1965]), p. 2, refers to the "irony of inversion": "the impetus of this ode is not praise of Lollius, but censure ironically disguised as praise."

[26] See Garnsey, pp. 221-233 ("The Vocabulary of Privilege"), for an account of the differences between the *honestiores* and the *humiliores* in terms of the moral attributes applied to each.

[27] Michael C. J. Putnam, Artifices of Eternity: Horace's Fourth Book of Odes (Ithaca, Cornell University Press, c1986), p. 167. Putnam, in a note (pp. 168-169), details the unfortunate defeat of Marcus Lollius in 16 B.C., a defeat that included the loss of a legion's eagle. Fraenkel (p. 426) notes that the passage about Lollius must have disappointed him, since it is full of general maxims. Commager also downplays the value of the lines, saying that they are "little more than a list of conventional virtues" (p. 322).

[28] *Vetabo, qui Cereris sacrum / vulgarit arcanae, sub isdem / sit trabibus fragilemque mecum / solvat phaselon* (Odes 3.2.26-29).

[29] It is interesting to note the similarities between Lollius and Regulus, as Horace portrays them. Both were defeated in battle, although Regulus died of torture at the hands of the

Carthaginians, and Lollius lived. Both are associated with the law. Horace (who treats both Lollius and Regulus with some ambivalence) seems to suggest that in both cases Rome's future direction lies with law and administration, not military prowess. James Arieti, "Horatian Philosophy and the Regulus Ode (Odes 3.5)," Transactions of the American Philological Association 120 (1990), p. 218, states: "Rome's strenuous forte now was to be legal, the administration of law and order, not endless conquest. Then, after a hard week's work at the bar, the Roman administrator, of whom Augustus was the archetype, was to refresh himself with wine and Greek culture. Regulus had been the true type of Roman in the days of expanding empire; but a new ideal was now needed, even as Augustus himself was proclaiming, acting, and enacting."

[30] *Quam paene furvae regna Proserpinae / et iudicantem vidimus Aeacum / sedesque discriptas piorum*... (Odes 2.13.21-23). Horace was almost killed by a falling tree.

[31] Hunter, p. 325: "The seller must suffer the sale to be rescinded, or give compensation in the option of the buyer, if the thing sold has undisclosed faults that interfere with the proper enjoyment of it. (D. 19.1.13.1). If the seller is ignorant of the faults, he is still responsible; but his ignorance affects the amount of damages. (D.19.1.13). If the seller knows of the faults and conceals them, he is guilty of bad faith (*dolus*)." Later, Hunter tells us (p. 326), there was an obligation imposed by the curule aedile, namely, "those that are selling slaves shall inform the buyers what disease or defect each has; which is a runaway or wanderer, or still liable to be claimed for some wrong....[D.21.1.1.1]." We may note that the seller mentions a minor form of flight on the part of the slave—essentially he fled from a beating. More serious forms of flight were *fugitivus* (a runaway, who deliberately attempts to escape his master) and *erro* (to wander off, staying away from home for a period of time and then returning voluntarily).

[32] Kilpatrick, The Poetry of Criticism, p. 17, identifies the legal terms in the seller's speech. He terms this usage "whimsical." As he states (p.17): "The inference that Florus is sufficiently interested and competent in both law and poetry to appreciate all this is confirmed by that earlier epistle to him (Epistles 1.3.20-25)...These allusions leave no room for doubt that Florus is competent in those fields, but we may also infer from both epistles that Florus can be unreasonable, something Horace tried to handle earlier with philosophy; here with a principle of law."

[33] Hunter, p. 907: "Maliciously to accuse another of a crime. This was the offence of *Calumnia* (D.48.16.1.5). By the *lex Remmia* the punishment was branding with the letter K (D.48.16.1.2)." The *lex Remmia* was a statute instituted prior to Cicero's time (p. li).

[34] For the importance of the toga, see Arieti, pp. 213-215.

[35] Fraenkel, p. 58. But who is this type? Fraenkel indicates that the last four lines of the poem point to the war between Octavian and Pompey (37/36 B.C.), from which we assume that the fellow was perhaps a prisoner of war, who was restored to Rome through *postliminium*.

[36] Mankin, p. 100, notes that the Spanish ropes could refer to galley slaves. The *tres viri capitales*, he observes (p. 105), "were minor magistrates responsible for "keeping the peace" by imprisoning or inflicting corporal punishment on criminals and renegade slaves."

[37] Horace observes (Satires 2.3.284-286) that anyone selling a libertinus without revealing his insanity does so at the risk of litigation: *sanus utrisque / auribus atque oculis; mentem, nisi litigiosus, / exciperet dominus, cum venderet.*

[38] The poem addresses a concern that was felt in Rome for many centuries, namely, the ever-growing affluence that was reflected in ever-growing consumption. Many attempts were made to curb luxurious living by legislation, starting with the *lex Orchia* in 181 B.C. See Niall Rudd, The Satires of Horace, pp. 161-173.

[39] See, for example, H. L. A. Hart, Punishment and Responsibility: Essays in the Philosophy of Law (Oxford, Clarendon Press, 1968).

[40] *Cura, curatio*: the appointment of someone to provide care for a person who is unable to look after himself (Hunter, p. 552). Hunter cites the Law of the Twelve Tables: "If a man is mad, or a spendthrift, and has no guardian, let his agnates and men of his *gens* have power over him and his money." This also applied to "lunatics, the deaf, the dumb, the incurably diseased" (J.1.23.4, Hunter, p. 553).

[41] For a descriptive account, see, for example, Rudd, The Satires of Horace, pp. 173-188.

[42] *Mille ovium insanus morti dedit, inclitum Ulixen / et Menelaum una mecum se occidere clamans* (vv. 197-198).

[43] The correct language for sacrifice, but, still, a euphemism for slaughter. Euphemisms are often used, Horace states elsewhere (Satires 1.3.51-53), to mask a fault: *at est truculentior atque / plus aequo liber; simplex fortisque habeatur. / Caldior est; acris inter numeretur.*

[44] *An tu reris eum occisa insanisse parente, / ac non ante malis dementem actum Furiis quam / in matris iugulo ferrum tepefecit acutum?* (Satires 2.3.134-136).

CHAPTER 4

HORACE AND THE JUSTICE OF PUNISHMENT

Quid tristes querimoniae, / si non supplicio culpa reciditur? (Odes 3.24.33-34). Horace's approach to justice, as we have seen, incorporates a framework of divinely-backed authority within which are those who, with *virtus* and clear-mindedness, administer the law and act as judges. This is one side of the equation, i.e. the justice of a moral, operating legal system. We may now proceed to examine the other side of the equation, namely, Horace's view of punishment.

Effugiet tamen haec sceleratus vincula Proteus. / cum rapies in ius malis ridentem alienis, / fiet aper, modo avis, modo saxum, et, cum volet, arbor. Not everyone, however, has the ability of Proteus to escape the chains, charges and punishment of a court (Satires 2.3.71-73). Horace makes it clear throughout his poems, both by examples and by passages in which he discusses the justice of punishment from a theoretical viewpoint, that those who are judged guilty of a crime should be punished, either according to law (for those offences that are punishable by law) or according to what is deserved (for non-legal violations of custom and morality). In both cases, as we will see, Horace's view is that the punishment must be just.

Some prefatory remarks. The introduction of the Twelve Tables as the basis of a written, codified, system of Roman law followed other written codes (e.g. the recorded laws of the Greek world) in establishing legal certainty. The Twelve Tables (and later

individual statute laws) set out, for the first time, Roman society's consensus with respect to crimes and the penalties associated with enfringement of the law. The recorded laws performed a democratizing purpose, in that any citizen could point to the same definition of what was legally a "wrong" and expect identical punishment. "Punishment," then, in the legal sense, refers to punishments meted out pursuant to a violation of Roman statute law. More especially, it is a function of criminal law, for here we are presented with specific crimes and the accompanying sanctions that apply.[1] Roman civil law, *ius civile*, on the other hand, is based not on punishment but on the principle of restoring a balance, of compensating the injured party in order to return to the *status quo ante*.[2] In civil suits, the charge and the corrective action to be taken, if the charge is proved, are set out in a formula by the judge, in conjunction with the plaintiff and defendant, before the case is heard.

Before we explore Horace's explicit comments on his concept of the justice of punishment, however, we may begin by looking briefly at the different categories and types of punishment that are found in his poems.

[a] Forms of Punishment

The crimes that Horace depicts in his poems may be divided broadly, as we have seen, into three main groups, namely, crimes against the gods, crimes against persons, and infringements of custom and morality. Punishments associated with these crimes may be categorized in a similar way. We will begin by considering the most colourful group (because of its thematic diversity and richness of detail), which consists of the punishments

associated with myth. Because of the range of mythological material that Horace introduces into his work, we must be selective.

References to the famous punishments of myth, which feature in many of Horace's poems, are interesting because the punishments are unique (not necessarily just). The world of the gods (Greek and Roman gods and later the world of heroes) has no written code of behaviour, no statute laws, no Twelve Tables that set out socially agreed upon crimes and punishments. The definitions of "crime" and "punishment" are not fixed and known to all, nor inscribed in stone (like the laws of Solon) nor even carved on wood (like Rome's Twelve Tables--*leges incidere ligno*, Ars Poetica v. 399).[3] Instead, we have the law and justice of a pre-literate or barely literate world (the world described by Homer and Hesiod)[4] that relies for definitions of criminality and punishment on the power of those with authority, and takes its decisions from Zeus or his councils of the gods (later councils of leaders and chieftains, such as we find illustrated on the Shield of Achilles).

Divine punishment is characterized by an apparent arbitrariness in selecting the time, place, mode and duration of punishment (including the power to make mortals immortal so that they can suffer enduring punishment). It is, then, some distance from publicly recorded schedules of punishment. This free hand allows the gods to express their will through tailor-made punishments that reveal ingenuity and inventiveness. The punishments are of two sorts, namely, [a] the punishment of mythical figures, and [b] the punishment of humans (taken singularly and collectively). Some examples. Best known is Jupiter's destruction of the rebellious Giants (cf. Odes 2.19 and 3.4), his thunderbolts despatching Typhoeus, Mimas, Rhoetus and the rest of their band to the Underworld--the

ultimate penalty of loss of life for assailing authority.[5] Less extreme, but no less painful, are punishments for acts of impropriety or insult against the gods. Here, Horace gives us a string of familiar examples (*notas...poenas*, Odes 3.11.21-32): Ixion, who spurned Jupiter's help and hospitality by attempting to rape Hera, was made immortal and turned for eternity on a burning wheel;[6] Tityus, punished by his father Jupiter for attacking his mistress Elara, was condemned to the Underworld, where snakes or vultures tore at his eternally rejuvenating liver; the daughters of Danaus, condemned to fill ever-leaking pots in punishment for killing their husbands; Tantalus, who in one version of the myth roasted his son as food for the gods, was punished by having his cravings for food and drink never satisfied (Epodes 17.66); and Sisyphus, sentenced to try forever to roll a rock up a hill for betraying Jupiter (Epodes 17.68).[7] A slightly different punishment recalled by Horace (Odes 4.12.5-8) is the gods' treatment of Procne. For killing, cooking and then serving her son Itys to her husband Tereus in revenge for his brutal rape of her sister Philomela, Procne was turned into a swallow. This divinely caused metamorphosis did not punish Procne's vengeance, since if this were a real, rather than a mythical, crime, Tereus would be liable under Roman law to penalties (e.g. for *stuprum*), including action for divorce, return of dowry, etc. Rather, she was punished for going too far (*quod male barbaras / regum est ulta libidines*, v. 7f.), namely, by administering a noxious substance (!) and committing parricide.

Horace's use of these mythical punishments echoes, in abbreviated form, the fuller accounts found elsewhere, such as in Lucretius' De Rerum Natura, i.e. 3.980-983 (Tantalus), 984-994 (Tityus), 995-1002 (Sisyphus) and 1003-1010 (the Danaids). But

there is a difference. Lucretius uses the punishments as "allegorical representations of mortal fears or troubles" and is careful to add a rationalizing passage (De Rerum Natura 3.1014-1023) that argues that the punishments of myth in the afterworld are derived from man's fears of punishment in this world.[8] Horace consistently avoids this kind of comment, which Lucretius employed to support the Epicurean dismissal of the fictions of myth and to downplay fear of death and its punishments. This is not to suggest that Horace thought any differently than Lucretius about the myths or the punishments of the gods, merely that he does not feel it necessary to insert a disclaimer. His audience was sophisticated and educated enough to understand that the myths were not to be taken literally. Indeed, Horace is not averse to mentioning mythical punishment after death in a straight-forward manner (cf. Odes 3.11.28-29: *seraque fata / quae manent culpas etiam sub Orco*).[9] Horace's use of mythical illustrations of punishment, we may argue, has little to do with man's sufferings after death. It has to do with illustrating the prerogatives of those who hold power to exercise that power against those who would attack or insult them. The divine structure of power and order, then, may be perceived as an allegorical representation of Roman law and order, rather than a comment on religious issues affecting the afterlife.

The gods' punishments of man differ from other divine punishments we have looked at, in that most of the crimes concern either acts of impiety with respect to religious observances and rituals or failure to follow divine direction or instructions. Man's affronts to the powers of the gods may incur individual or collective punishment. Daedalus, for example, was punished by the loss of his son for attempting flight *pennis*

non homini datis (Odes 1.3.35), i.e. for impinging on a province of the gods. Lycurgus was blinded and then killed by Bacchus for his impiety in attempting to stop Bacchic worship. Communal punishment was inflicted on man—fever, disease and death—because Prometheus stole fire from the gods and gave it to mankind (Odes 1.3.27-33).[10] The Trojan people were also to suffer displeasure of the gods, because of the adulterous behaviour of Helen and Paris, as Nereus prophesizes: *mala ducis avi domum, / quam multo repetet Graecia milite, / coniurata tuas rumpere nuptias / et regnum Priami vetus...post certas hiemes uret Achaicus / ignis Iliacas domos* (Odes 1.15.5-8, 35-36). And, the Greeks were punished by Athena, because of Ajax' defilement of her temple during the sack of Troy: for this, Athena attacked the Greek fleet (*quietiore nec feratur aequore / quam Graia victorum manus, / cum Pallas usto vertit iram ab Ilio / in impiam Aiacis ratem* (Epodes 10.11-14). These communal punishments are associated with individual, named personages who have committed crimes or wrongs. However, the gods may also punish man collectively or give portents of their displeasure in ways that are generalized and subject to human interpretation. Here we find punishments associated with acts of Nature, that, according to Epicurean thought, man attributed incorrectly to some divine intervention. Nichols comments on Lucretius' approach in Book 5 of the De Rerum Natura:

> ...men fear the gods when lightning bolts cause the earth to tremble and murmurings run through the sky; peoples, nations, and proud kings tremble in fear of the gods, "lest the heavy time of being punished for something foully done or proudly said is at hand" (5.1224-1225). Instead of taking lightning for what it is, a powerful destructive natural force that is indifferent (but hostile in its effect) to men, they interpret it as a manifestation of divine wrath; men can believe in such wrath only if there

> is some explanation of it; it is understood as caused by and directed against human wrong doing.[11]

It is against a backdrop of such natural phenomena and disasters that Horace first appeals to Augustus to become the saviour of the Roman state (Odes 1.2). Enough of snow and hail and lightning that terrifies the city of Rome, he cries (*iam satis terris nivis atque dirae / grandinis misit Pater et rubente / dextera sacras iaculatus arces / terruit urbem*...(vv. 1-4). Enough of the portents of the past, of the floods that drove herds to the mountain tops, of fishes lifted to tree-tops, of the Tiber river recoiled on itself, of the divine punishments that avenged the Romans' impieties and civil wars.[12] Let Augustus be the avenger of Caesar's death, Horace writes, and punish Rome's enemies in turn: *hic magnos potius triumphos, / hic ames dici pater atque princeps, / neu sinas Medos equitare inultos, / te duce, Caesar* (vv. 49-52). The source of Rome's troubles, *hoc fonte derivata clades / in patriam populumque fluxit* (vv. 19-20), he points out (Odes 3.6), is its disregard of the gods and their temples (vv. 2-4). From this, from its civil wars (*occupatam seditionibus*, v. 13), and from its pollution of the marriage bed and taste for adultery and unrestrained sex, come the gods' punishments, in the form of battlefield losses and humiliation.[13]

The mythical punishments depicted by Horace may be interpreted, as we have suggested, as thinly veiled allegories supporting the poet's wish for strong leadership of the Roman state and the need to establish and maintain order by dispensing punishment for threats and disobedience.[14] As Fears notes (of Odes 1.2): "Jupiter has appointed Augustus to expiate the crimes of Rome and the resultant divine wrath."[15] Powers of

punishment existed in Roman law for the most serious criminal acts associated with *maiestas*, codified in law by Julius Caesar's *lex Julia maiestatis*. However, Horace rarely provides us with contemporary acts of *maiestas*. A notable example is that of the so-called "Cleopatra Ode" (Odes 1.37), a poem in which Horace displays special loathing for Cleopatra, the *fatale monstrum*, whose crime was to plot the downfall of Rome:[16]

> *...dum Capitolio*
> *regina dementis ruinas,*
> *funus et imperio parabat*
>
> *contaminato cum grege turpium*
> *morbo virorum, quidlibet impotens*
> *sperare fortunaque dulci*
> *ebria...*
>
> (Odes 1.37.6-12)

The plan is one of madness, drunken madness, *mentemque lymphatam Mareotico* (v. 14), inspired by Fortune, criminal madness (*furor*, v. 12). But there is no mercy for her, no mitigation. Octavian pursued her (no mention of Anthony), to bring her to Rome in chains like an animal or slave: *daret ut catenis / fatale monstrum* (v. 20f.). However, Horace writes, the beast in reality was now no more than a frightened dove, a hare: *redegit in veros timores / Caesar.../ ...accipiter velut / molles columbas aut leporem* (vv. 15-18). The *fatale monstrum* was no longer a threat to Octavian. Like Romans who sought to avoid the humiliation of trial and public execution, Cleopatra took her own life (as Anthony had done before her). While Horace had an opportunity to condemn the way in which Cleopatra had escaped Roman justice, he treats Cleopatra's suicide as an attempt to find a nobler death, *quae generosius / perire quaerens* (v. 21f.), and ends the poem

admiring her unwomanly courage in avoiding public display, *privata deduci superbo / non humilis mulier triumpho* (vv. 31-32). A just ending and punishment for a proud woman.[17]

Cleopatra somehow earns Horace's respect in the way that she chose to execute her own punishment. Her death is almost noble. However, the poet finds little nobility in other punishments, particularly those that apply to crimes against the Roman moral fabric. *Quare, ne paeniteat te, / desine matronas sectarier, unde laboris / plus haurire mali est quam ex re decerpere fructus* (Satires 1.2.77-79). For Horace, adultery and sexual licence are to be avoided because they are morally threatening to the Roman state. It is not surprising, therefore, that he pays considerable attention to the punishment of these behaviours, emphasizing both legal and social penalties. Pursuing married women, or unmarried women of high station, is particularly dangerous, with great personal risk, as he recounts in at least two poems.[18] In the first, Satires 1.2.41-46, he points to the hardships of the would-be seducer, most of which involve, not legal remedies of the husband, but the perils of the Roman streets and the husband's revenge:

> *hic se praecipitem tecto dedit; ille flagellis*
> *ad mortem caesus; fugiens hic decidit acrem*
> *praedonum in turbam, dedit hic pro corpore nummos,*
> *hunc perminxerunt calones; quin etiam illud*
> *accidit, ut quidam testis caudamque salacem*
> *demeteret ferro.*

Except for jumping off roofs or stumbling into a band of robbers (unfortunate events that point more to the lack of safety and order on Rome's streets than to the crime of adultery itself), the catalogue of punishments reflects, perhaps, what Horace thinks a seducer deserves. But the poet overlooks that the punishments are crimes in themselves, some

more serious than the adultery that gives rise to them.[19] The second passage is less robust in its punishments (there are no brigands, whips or knives), but the text is more dramatic and theatrical in its depiction of the seducer caught in the act. The narrator is Horace's slave, Davus, who takes advantage of the feast of the Saturnalia to tell his master a few home truths. The larger theme is enslavement of the desires (based on the Stoic paradox that "all fools are mad"), an implication of which is the constant threat of discovery and punishment:[20]

> *...metuens induceris atque*
> *altercante libidinibus tremis ossa pavore.*
> *Quid refert, uri virgis, ferroque necari*
> *auctoratus eas, an turpi clausus in arca,*
> *quo te demisit peccati conscia erilis,*
> *contractum genibus tangas caput? Estne marito*
> *matronae peccantis in ambo iusta potestas?*
> *In corruptorem vel iustior. Illa tamen se*
> *non habitu mutatve loco, peccatve superne,*
> *cum te formidet mulier neque credat amanti.*
> *Ibis sub furcam prudens, dominoque furenti*
> *committes rem omnem et vitam et cum corpore famam.*

(Satires 2.7.56-67)

In the previous passage Horace shows us the impact of adulterous behaviour from a distance—a catalogue of punishments, each expressed in a simple sentence. The behaviour leads to physically painful consequences. In this passage we obtain a much closer look and the focus is different. Horace enjoins us to think about the mental, emotional and psychological punishments of the participants. The philanderer's immediate punishment is humiliation. What could be more humiliating than a trembling man, hidden by a maidservant in a chest, with his knees tucked up to his chin in a ridiculous position?

As for the object of his desires, she is fearful both on account of her husband and from lack of trust in the lover. And the husband, when he discovers the adultery, will be insane with anger (*furenti*). For all of this (none of the participants are happy) the seducer will place himself, his wealth and finally his reputation in bondage. Of all the punishments, however, Davus (Horace) puts loss of reputation (*fama*) as the most important. Wounds heal, wealth can be rebuilt, but loss of repute (and thus *virtus*) may be irreparable. But to the lover the pleasure and danger is all too exciting and even if he escapes, he will be back for more punishment: *quaeres quando iterum paveas iterumque perire / possis, o totiens servus!* (v. 69f.).

The punishments that we have looked at briefly so far are all serious-minded. However, we cannot leave our theme without considering one more kind of punishment, namely, punishments that are threatened (often invoked with imprecations), but which may never happen. Horace, for example, groans with garlic-induced indigestion. He curses his host, Maecenas, hoping that, if he tricks him into eating garlic again, as punishment his sweetheart will refuse him in turn on account of his foul breath:[21]

> *parentis olim si quis impia manu*
> *senile guttur fregerit,*
> *edit cicutis alium nocentius,*
> *o dura messorum ilia!*
> ...
> *at si quid umquam tale concupiveris,*
> *iocose Maecenas, precor*
> *manum puella savio opponat tuo,*
> *extrema et in sponda cubet.*
>
> (Epodes 3.1-4, 19-22)

However, behind the friendly prank, which seems to have little to do with the law, is the more sinister subject of poisoning and the use of poison to punish a rival. If the act was intended to murder, then the provisions of the *lex Cornelia de sicariis* could apply (i.e. capital punishment). The same law could apply, if the poisoning was associated with magic. This dark side of an otherwise culinary joke (*quid hoc veneni saevit in praecordiis? / num viperinus his cruor / incoctus herbis me fefellit? An malas / Canidia tractavit dapes?* vv. 5-8) is recalled by Horace with reference to some of the famous poisonings and magical concoctions of myth—Medea's use of potions to help Jason and later to take vengeance on her rival (*ignota tauris illigaturum iuga / perunxit hoc Iasonem; / hoc delibutis ulta donis paelicem / serpente fugit alite*, vv. 11-14), and Nessus' fatal gift of a bloody potion to Deianeira that led to Hercules' death (*nec mumus umeris efficacis Herculis / inarsit aestuosius*, v. 17f.). This is all exaggeration, of course, in response to discomfort caused by garlic that is "deadlier than hemlock" (*cicutis alium nocentius*, v. 3). It is in contrast to the punishment wished on his patron Maecenas. Fraenkel notes that "the pretty anticlimax at the end (21f.) is in harmony with the mocking spirit of the poem; the touch is so light that the apparent curse sounds almost like an affectionate compliment to Maecenas."[22] The punishment is, as Mankin observes, "a far cry from an execution."[23] A similar mock attack falls on the head of the unfortunate fellow who planted the tree that almost dispatched Horace from the world:

> *illum et parentis crediderim sui*
> *fregisse cervicem et penetralia*
> *sparsisse nocturno cruore*
> *hospitis; ille venena Colcha*

et quicquid usquam concipitur nefas
tractavit, agro qui statuit meo
te, triste lignum, te caducum
in domini caput immerentis.

(Odes 2.13.5-12)

The verses are a masterpiece of logic gone awry, of crime and punishment horribly confused. From the falling of a tree (an otherwise random act), Horace concocts the thought that the fall was deliberate; and, if it was deliberate, then someone must have planned it. The someone must therefore be an evil fellow, capable of every excess of crime, from parricide to whatever crimes there are (*quicquid...nefas*). The tree itself (addressed almost as if it were one of Horace's servants) is the innocent, reluctant, instrument (*triste lignum*). And, moreover, the poet does not deserve such treatment (*immerentis*)—although the very mention of meriting such an act raises the question that perhaps there may be something to it after all? The theme—sudden, unforeseen death (*sed improvisa leti / vis rapuit rapietque gentes* [vv. 19-20])—is normally associated with some divine act (of the Fates, of *dira necessitas*), which is essentially impersonal (everyone must die). But here the act is more sinister, because it is a death planned by someone among the living, a death that is untimely in all respects, a death by a criminal act (although Horace must expect us to be hard-pressed to believe the absurdity that a criminal could have such foresight, such detailed knowledge of the very moment that the poet would walk by).

Not far from Horace's thoughts in both of these poems (in both of which the poet is almost the victim of a crime) is Canidia (Epodes 3.9 and Odes 2.13.8, *venena Colcha*),

a hellish figure that appears prominently in three poems (Satires 1.8, Epodes 5 and 17), and a figure intimately associated by the poet with magic, witchcraft and poison.[24] The punishments for these serious acts are set out in Roman law. Apart from murder, to which reference has already been made, the pursuit of witchcraft, magic and incantations was punishable by death (by crucifixion or burning) for members of the lower orders and deportation or exile for the higher orders.[25] But these punishments, while just, are not enough as far as Horace is concerned. Canidia's punishment, the poet hopes, will reflect her crimes. This, at any rate, is the curse of a young boy, doomed to be killed in one of Canidia's rites. He will return as a Fury to haunt her and the mob will tear her apart:

> *venena magnum non fas nefasque, non valent*
> *convertere humanam vicem.*
> *Diris agam vos; dira detestatio*
> *nulla expiatur victima.*
> *Quin, ubi perire iussus exspiravero,*
> *nocturnus occurram Furor*
> ...
> *vos turba vicatim hinc et hinc saxis petens*
> *contundet obscenas anus;*
> *post insepulta membra different lupi*
> *et Esquilinae alites...*
>
> (Epodes 5.87-92, 97-100)

Stoning by the people, followed by lack of burial and then dismemberment of Canidia's corpse by scavenger wolves and birds, are punishments that go beyond the law. However, they show the ferocity (and perhaps youthfulness) of the boy's feelings and the extreme measures that satisfy his sense of justice. The images resonate with memories of Hector's abused corpse and Polynices' unburied body; however, Hector and Polynices were men

whose lives were given on the battlefield among the corpses of their comrades. Although both fought on the "wrong" side, both have powerful claims to the decencies of burial. Canidia, on the other hand, preyed upon fields of corpses on the Esquiline Hill (a former graveyard) for the objects of her witchcraft, a figure more troublesome to the wooden statue of the god Priapus (narrator of Satires 1.8) than thieves and beasts.[26] But, however much Horace may have wanted to dispense with hags like Canidia (and few Romans would have complained),[27] he fails to mention that this kind of individual or mob violence was itself a crime at law, with strong resonances of its own in the Roman mind to the mob violence of the late Republic.

The three main types of punishment that we have considered briefly in these pages are wide-ranging, from the well-worn mythical punishments of the gods to those that deal, for example, with the heart of Roman society and its attitudes to marriage and sexual licence and, finally, to those that focus on wished-for punishments that lie outside the law. But are they just? For Horace, the punishments of myth are just in the sense that the gods are just and in the sense that the myths support what Horace wants to say allegorically about the rightful power of a Roman ruler to punish assaults on the Roman state. As we shall see later, in discussing mitigation of punishment, Horace backs, through the voice of Canidia, the notion that the punishments of the gods cannot be abated or set aside (Epodes 17.69: *sed vetant leges Iovis* [i.e. to end the torments of Tantalus, Prometheus and Sisyphus]). There is also divine punishment of man, through acts of nature, that applies broadly in response to how man behaves and, more importantly, to how the ruler behaves. These punishments, unleashed on the Roman people, fit Horace's concept of justice, in

that all around him he sees a generation worse than that which preceded it and Romans who must pay for the sins of their fathers:[28] *damnosa quid non imminuit dies? / aetas parentum, peior avis, tulit / nos nequiores, mox daturos / progeniem vitiosiorem* (Odes 3.6.45-48). Finally, Horace gives us the wished-for punishments that are properly the result of anger, not law, that is, the responses of individuals who are momentarily overcome with pain and the need for revenge.[29] This is not to say that such punishments are just. But they are understandable and illustrate Horace's point elsewhere, namely, that anger is dangerous, because it may lead to destruction and unexpected results:

> *...qui non moderabitur irae,*
> *infectum volet esse, dolor quod suaserit et mens,*
> *dum poenas odio per vim festinat inulto.*
> *Ira furor brevis est: animum rege; qui nisi paret*
> *imperat; hunc frenis, hunc tu compesce catena.*
>
> (Epistles 1.2.59-63)

The thought is reminiscent of that of the Peripatetics,[30] of restrained anger. Seen from the viewpoint of justice, anger is to be moderated, in order for punishment to be just and measured. We have seen this in Horace's bad experience with garlic: the anger momentarily outweighs the crime, but, at poem's end, the wished for punishment is now more suited to the minor nature of the "crime."

To sum up. Horace views punishment from various perspectives. First, it represents a penalty for a crime or wrong, whether committed against the gods, against the Roman state or against an individual. This is the punitive purpose that inflicts some loss. As Horace writes in Epistles 1.2.14-16: *quidquid delirant reges, plectuntur Achivi. / seditione, dolis, scelere atque libidine et ira / Iliacos intra muros peccatur et extra.*

Second, it provides a way for the taking of vengeance or revenge. This is the personal desire (of gods or man) to right a perceived wrong or injustice, to correct the balance. The punishments that we have examined are practical examples of Horace's thoughts on the justice of punishment, thoughts that are built on the belief that punishment should fit the crime. We may now consider the principles underlying Horace's approach.

[b] The Punishment fits the Crime

At the heart of Horace's view of the justice of punishment is the idea (simply expressed, but less obvious in practice) that the punishment should fit the crime. The principle is seen at work in most of the examples of punishment that have been presented, both those wrought by the gods and the rewards proffered by Horace for moral lapses. These punishments all have the feel of natural justice; that is, there is an appropriateness in the mode and severity of the penalties. The punishment of the Danaids, for example, is domestic in form (the endless repetition of what would otherwise be a normal domestic task—filling a pot with water), because their crime struck at the heart of the family. The punishment is psychological. It plays upon the futility of an activity that is no longer required in homes that no longer exist; it is a constant reminder of family lost. Tantalus endures a similar psychological torture—unending thirst and hunger for offering his son as food for the gods. Ixion's torments suggest nothing more than male vengeance; eternal punishment in which pain and suffering are the main ingredients. These ancient mythical punishments were not, of course, invented by Horace, but were appropriated by him as allegories of unrestrained and perhaps capricious punishments. He uses them, for example, to exaggerate the poet's complaint to Canidia about his suffering and to bolster

his plea for clemency (Epodes 17). They are also used as potent allegories for the kinds of punishment that await those guilty of *maiestas* against the Roman state and its ruler.

Horace's longest and most explicit excursus on the justice of punishment is found in one of his earliest poems, Satires 1.3.76-98 and 115-124. Some parts of this poem have been examined already, namely, Horace's Epicurean comments on the development of the law (vv. 99-112) and his observations on how to weigh faults (vv. 1-75). Within the structure of the poem (and sandwiched between the two preceding themes), the importance of the exercise of judgement leads logically to thoughts on determining punishment. To an extent, of course, Horace has already tipped his hand. It would be hard, if not impossible, for him to set out thoughts on the careful weighing of faults, the sensitive balancing and counter-balancing of considerations such as those proposed in the following verses;[31]

> *amicus dulcis, ut aequum est,*
> *cum mea compenset vitiis bona, pluribus hisce,*
> *si modo plura mihi bona sunt, inclinet, amari*
> *si volet. Hac lege in trutina ponetur eadem.*
>
> (Satires 1.3.69-72)

if, when all is done and judgement rendered, he did not apply the same reasoning to determine an appropriate penalty. The point: why should Reason not use weights and measures to arrive at punishment? *Cur non / ponderibus modulisque suis ratio utitur, ac res / ut quaeque est, ita suppliciis delicta coercet?* (vv. 77-79). Horace gives us, then, in sum, a sophisticated system of justice in which on one side is the individual assessment of guilt and personal responsibility and on the other the weighing of the penalty to be applied.

Horace does not disengage entirely the two sides of the equation, in that there is an expressed linkage between guilt and penalty. However, the link is limited to two considerations, namely, the presence of the "fault of anger" (*vitium irae*, v. 76) and the fault of mental incapacity (*cetera item nequeunt stultis haerentia*, v. 77). There is no suggestion that other factors should have force, i.e. those derived from *gratia*, *pecunia* or *potentia*. Implicit in Horace's arrangement is, in Aristotelian terms, justifiable inequality before the law, i.e. "the granting of preferential treatment to people suffering from hardship" (in this case, the inequalities of people suffering from madness or mental limitations).[32] Central to the whole arrangement is the importance of reason in the measuring and weighing of both crime and its appropriate punishment.

The suggestion that different crimes should have different punishments, as commentators have noted, is a direct assault on the philosophical position of the Stoics. In this Horace followed the thinking of Cicero, who could not accept an extreme approach to punishment. His position is similar to that noted by Cicero in the De Officiis (1.25.89): *cavendum ne maior poena quam culpa sit.* The Stoics, we recall, held that all crimes, regardless of their severity, deserve the same punishment (although they did not go as far as the laws of Draco, which made all crimes punishable with death).[33] For the Stoics it was sufficient that the perpetrator cross the line that defines an act as a crime; how far the perpetrator goes beyond that line is not relevant, i.e. it cannot increase the guilt or raise the penalty. Horace demonstrates the foolishness of this approach when applied to real situations (*quis paria esse fere placuit peccata, laborant / cum ventum ad verum est*, v. 96f.) with a series of extreme examples and problems. Should one, he asks;

[a] crucify a slave for eating leftovers? *Si quis eum servum, patinam qui tollere iussus / semesos piscis tepidumque ligurrierit ius, / in cruce suffigat* (vv. 80-82).

[b] treat a friend's slight as if it were the same as failing to meet one's obligations on a debt? *Paulum deliquit amicus / ...acerbus / odisti et fugis ut Rusonem debitor aeris*...(vv. 84-86).

[c] treat a friend's indiscretions, when, in his cups, he wets the couch or breaks an antique vase, or violates etiquette by helping himself to the host's chicken at dinner, as if that friend were to steal, betray a trust or default on a bond? *Comminxit lectum potus, mensave catillum / Euandri manibus tritum deiecit; ob hanc rem, / aut positum ante mea quia pullum in parte catini / sustulit esuriens, mimus hoc iucundus amicus / sit mihi? Quid faciam si furtum fecerit, aut si / prodiderit commissa fide sponsumve negarit?* (vv. 90-95).

[d] consider stealing cabbages from a neighbour's yard the same as stealing *sacra* from the temples of the gods? *Qui teneros caulis alieni fregerit horti / et qui nocturnus sacra divum legerit* (v. 116f.).[34]

However, Horace is doing more than pointing to the logical and practical absurdities of Stoic thinking. He is showing not only that there is something wrong in assigning crimes that have widely different levels of severity to the same category, but that there is also a need to consider the appropriateness of punishments for less serious acts. Indirectly, therefore, Horace exposes some severities of Roman law (i.e. punishments for eating leftovers, personal slights, indiscretions, stealing a cabbage). Technically, all the offences that are listed above were punishable at law. But how should they be punished? Each of Horace's examples is legally complex. Horace offers the most serious discrepancy that exists between crime and punishment first, namely, the application of a capital punishment for a trivial act. The punishment itself, crucifixion, was reserved for slaves, and could be inflicted by a master on his slave for any reason. Hunter observes:

> Until the Empire, no legal check seems to have been placed on this terrible power. During the whole period of the Republic, the only security of the slave was the conscience of his master and the influence of general opinion.[35]

By giving prominence to such a punishment, for the most trivial of acts, Horace is clearly voicing his opposition to the practice; such a master would be madder than Labeo, Horace claims—*Labeone insanior inter / sanos dicatur* (v. 82f.)—but this remark (how could such an insane thing happen?) may mask the fact that such things really did happen.

But there is another way of considering minor offences. Horace's own slave, Davus, makes the point (Satires 2.7.102-11) that there is something unjust (in a system, in a society) when a slave is punished for stealing food from his master's table to satisfy his hunger, whereas the master's own indulgences are treated as nothing. Is there any difference, Davus questions, between a slave who sells a strigil for a few drinks and his master who parts with his property to satisfy his taste for fine food?:

> *Nil ego, si ducor libo fumante: tibi ingens*
> *virtus atque animus cenis responsat opimis?*
> *Obsequium ventris mihi perniciosius est cur?*
> *Tergo plector enim. Qui tu impunitior illa,*
> *quae parvo sumi nequeunt, obsonia captas?*
> ...
> *...an hic peccat, sub noctem qui puer uvam*
> *furtiva mutat strigili? Qui praedia vendit,*
> *nil servile gulae parens habet?*
>
> (Satires 2.7.102-106; 109-111)

Implicit in this thinking is that there is not only a relative difference between crimes, but a proportional difference, i.e. the master's crime is the same as that of the slave, but at a

greater level of magnification. Considering the matter from a different aspect, if the master is not punished for his actions, how can it be fair (or even a crime) for a slave to be punished for the same, but proportionally smaller, act? Taken together, these two poems (Satires 1.3 and 2.7) indicate that Horace finds minor crimes of Roman slaves excusable on at least two grounds, namely, [a] because they are minor relative to other crimes, and [b] because they are similar to, and proportionally smaller than, acts that are excused in other areas of Roman society.

The assault on unfair punishments continues. There is an obvious difference in scale, Horace claims, between [i] soiling a couch or breaking a vase (delicts, i.e. actions that could result in civil liability, dealt with under civil law), [ii] defaulting on a bond (a civil law offence) and [iii] theft (subject to both civil and criminal law). Objectively, at law, it would be unlikely that the drunken guest who ruins a couch or breaks a pot would be found guilty (*culpa*, blame and thus responsibility), in that [a] it would be difficult to prove that the inebriated person intended to damage his host's property, and [b] the host shares some *culpa*, because he allowed his guest to become drunk and did not secure his property from possible damage.[36] Subjectively, i.e. seen from the host's perspective, the drunken guest has committed acts against his property on which he could take legal action (although it is doubtful that he would win). The brunt of Horace's (i.e. the host's) evaluation, however, is moral in flavour rather than legal—the guest has done something he *should not / ought not* to have done. The same difference in force could apply to Horace's second example, in that failure to honour obligations on a loan or debt could be a minor or a serious matter to be tested in civil law. Similarly, a "slight" could be no more

than an indiscrete remark that is barely worth the bother of a lawsuit, or a matter that seriously damages someone's reputation. As to the theft of a tender young cabbage, this may be dealt with in civil law (only serious cases of theft would be taken to criminal trial),[37] whereas for the theft of *sacra* (*sacrilegium*): "the punishment was the mines, or deportation for persons of rank; or if force were employed, death."[38] However, Horace's point is that theft of a cabbage is something that a person would be "ungracious" not to forgive, *quod nisi concedas, habeare insuavis* (v. 85), in the same way that it is the right thing to do to overlook minor insults, spoiled couches or broken pots rather than to pursue the guilty in a lawsuit.

In drawing attention to the need to disregard certain minor acts or damages, Horace exposes the weakness in the Stoic argument that all crimes are equal. But the primary point is that such an approach is not only logical, it is what the virtuous man should do in the spirit of forgiveness. This attacks part of the Stoic position, but does not yet address the issue of what to do in the case of more serious crimes. If given a chance (*si tibi regnum / permittant homines*, v. 123f.), Horace observes, the Stoics would "prune away all crimes, great and small, with the same pruning hook" (*mineris / falce recisurum simili te*, v. 122f.). While this would punish crime, Horace disagrees on rational grounds (*nec vincet Ratio hoc*, v. 115) that it is the correct thing to do. The danger is, he writes, that either [a] someone may receive more punishment than the crime warrants (*ne scutica dignum horribili sectere flagello*, v. 119), or, equally bad, [b] someone may suffer less punishment than he deserves (although there is no fear of that!: *nam ut ferula caedas meritum maiora subire / verbera non vereor*, v. 120f.). Better, writes Horace, that there

should be just punishment, in which punishment fits the crime: *adsit / regula, peccatis quae poenas inroget aequas* (v. 117f.). This approach, of course, does not detract from the need for severe punishment, when this is deserved. Horace no doubt would have agreed with Cicero's observation (De Officiis 1.25.88):

> *et tamen ita probanda est mansuetudo atque clementia ut adhibeatur rei publicae causa severitas sine qua administrari non potest.*

Horace's objection to the Stoic position is based on the blunt assertion that it controverts feelings, custom and expediency: *sensus moresque repugnant / atque ipsa utilitas, iusti prope mater et aequi* (vv. 97-98). At first sight Horace's approach recalls that of the Epicureans—the concept of 'utility' being a familiar tenet of Epicurean views on justice.[39] However, the principles of what is 'just' and 'equal' (or equitable) are also fundamental to Aristotle. The overall flavour of the poem, we may argue, is less attentive to the utility of punishment than to the search for a scale (*regula*) of punishment that is proportional and equitable to crimes. This emphasis is more Aristotelian than Epicurean. But more important, there is also a distinctly Horatian component, in that the narrator of the poem is ready to forgive the lesser "crimes" of his friends, that is, he is not eager to press for compensation at law for a soiled couch or a broken pot. He is ready to be merciful, to mitigate the penalty, for those crimes that are below a certain level of seriousness, if there are mitigating considerations (e.g. the offences are those of a friend, or accidents due to drunkenness). The Horatian *regula*, then, in contrast to that of the Stoics, is not only calibrated but calibrated in such a way that the lower end of the scale is virtually omitted. However, as we shall see next in our final look at Horace's view of

punishment, mitigation of a penalty, or clemency (*clementia*), is sometimes too much to ask or expect.

Of the four virtues inscribed on the shield presented to Augustus in 27 B.C., *clementia* ranks second after *virtus* and precedes both justice (*iustitia*) and *pietas*. The placement, we may argue, is far from casual. In ascribing qualities to Augustus in this order the Senate conveys the impression of a ruler altogether different from one who would put justice ahead of virtue and clemency.[40] Such an attribution, of course, reflects the Senate's hope for Augustus as head of state, as the promoter of Roman values and policies.[41] Within the narrower sphere of the law the concept of *clementia* is less clearly expressed. Mitigation, that is, removing or reducing the penalty for a crime, may occur during sentencing or after it, on appeal.[42] In practice, however, there was little flexibility allowed in Roman criminal law in sentencing. As Garnsey notes, the penalties were fixed:

> under the jury-court system characteristic of the late Republic and early Empire, the task of the court was to issue a verdict, and not to decide upon a penalty. The penalty was already fixed by the law which set up the court.[43]

This arrangement differs from the Greek model of the time of Socrates, for example, where two penalties could be recommended and the jury decided the punishment that was more appropriate.[44] Even so, the punishments ordered under Roman law were not always applied consistently. Citizens, for example, fared better than aliens or slaves, in that they tended to receive lesser penalties. And, where capital crimes were concerned, citizens rarely, if ever, received a death penalty (*capite puniri*),[45] banishment being the customary sentence (*interdictio aqua et igni, exilium, deportatio*).[46]

We have already examined some of the factors that Horace thought relevant in the process of producing a just judgement, a process that would consider such mitigating factors as insanity or flawed character. Horace has somewhat less to write about the mitigation of punishment after it has been ordered or implemented, but, here too, he takes the side of merciful treatment, a reflection, perhaps, of the mercy that was shown to him after taking part on the wrong, losing side at Philippi. Most of Horace's thoughts on the issue are contained in an unlikely poem, Epodes 17, in which the poet depicts an interview between the poet-narrator and the witch Canidia. With the exaggerated feeling of satire, the poet, like a suppliant (*supplex*, v. 2), appeals to Canidia to end his suffering (*dedi satis superque poenarum tibi*, v. 19), suffering that Canidia has put on him for spreading malicious rumours about her. The appeal of his sentence begins with mythical examples of mitigation: Nereus' grandson, Achilles, spared Telephus and also relented to allow Hector's body to be buried; and Circe freed Ulysses' companions. The poet himself is exhausted by his sufferings and willing to admit that Canidia is right. He will pay any further punishment to end the torment: *quae finis aut quod me manet stipendium? / effare, iussas cum fide poenas luam*... (v. 36f.). He will praise her, if only she will release him. But Canidia will have none of it. There is no mercy for the defamatory things that he has said about her. His punishment will be as unending as those of Tantalus, Prometheus and Sisyphus. To endure his punishment, he will not even be allowed to commit suicide (a Roman citizen's way of avoiding the dishonour of a serious crime). Canidia will not make exceptions for him alone. And so, for the poet at least, the punishment is unmitigated and

Canidia, by implication, less forgiving and generous than some of the great figures of myth and legend. The point is made, however, that sometimes punishment must be served.

Canidia's complaint against the poet-narrator is, in part, that he had spread stories about her: *et Esquilini pontifex venefici / impune ut urbem nomine impleris meo?* (vv. 58-59). Of course, from what we know about Canidia, the poet's stories probably had more than a grain of truth about them. But that is not the issue here. Canidia, with her witch's powers, has the means to punish the poet, whether his tales were true or false. And the poet is more than ready to beg for respite, no matter whether he is in the right or not. However, beneath the poet's exaggerated pleas and Canidia's equally exaggerated anger, is the issue of libel. Libel, a serious offence, was first referenced in the Twelve Tables. Later, the praetors added to the edict provisions that gradually widened the definition of crimes against the person, including *iniuria*, that is, crimes against a man's reputation, honour or standing. At first the crime was dealt with under civil law, but later, perhaps as the result of a *senatusconsultum* of Augustus, libel and slander became part of the *lex Cornelia de sicariis*,[47] i.e. there could also be a criminal aspect (punishable by deportation).[48] To an extent, therefore, Canidia was justified in punishing the poet, even though her methods were outside the law. It is interesting that Canidia, who is elsewhere treated as a source of witchcraft and a person closely associated with poisoning, is here afforded the position of a judge who has the power to inflict and mitigate punishment.

Epodes 17 forms a sequel, thematically and perhaps in terms of the poem's date of composition, to Satires 2.1. In the latter poem, we recall, the poet seeks out the legal advice of C. Trebatius Testa, who was one of the foremost iurisconsults of the late

Republic and early Principate, a friend of Cicero and legal advisor to Augustus.[49] With the calm detachment of the legal mind, the affable Trebatius listens to the poet as he recounts his dilemma—to write satirical poems or not? When all his suggestions have been exhausted, Trebatius reminds his client of the hard facts, namely, the legal consequences of libelous writing (vv. 80-83):

> *sed tamen ut monitus caveas, ne forte negoti*
> *incutiat tibi quid sanctarum inscitia legum:*
> *si mala condiderit in quem quis carmina, ius est*
> *iudiciumque.*

But what if the satirist hits the mark, if what he writes is true? Then he will win the lawsuit, Trebatius concludes: *solventur risu tabulae, tu missus abibis* (v. 86). Trebatius can only advise his client and point to the legal implications of what he plans to do. The poet-client must choose which path to take and in Epodes 17 Horace relates the sorry outcome of what may have happened. Not that it was all unforeseen: ironically, perhaps, the poet hints to Trebatius (vv. 47-49) that Canidia, among others, may react badly: *Cervius iratus leges minitatur et urnam, / Canidia Albuci quibus est inimica venenum, / grande malum Turius, si quid se iudice certes.*

There is a hard edge to Horace's thinking about mitigation. If the crime is done, and the penalty known, then there should not be too much expectation of leniency. For minor faults, such as a broken pot or soiled couch, the remedies of the court can be forgotten. But for more serious crimes, the punishment must stand, and Horace shows little sympathy for acts against the state or its rulers.

Horace's treatment of punishment may be summarized in two ways. On the one hand we have philosophical considerations of what constitutes an appropriate penalty. As we have seen, Horace adopts a largely Aristotelian approach, in which punishment represents a penalty for a crime and the issue becomes one of finding a penalty that matches the crime fairly and justly. For Horace this is achieved, first, by constructing a scale or set of principles (*regula*) of punishment that differentiates between crimes (as distinct from a Stoic approach, in which there is a greater similarity in punishment). This simple principle (proportional justice) tries to ensure that punishment for any specific crime is neither too harsh nor too lenient, but is calibrated to the crime. Crimes, therefore, are ranked by seriousness according to the scale.[50] Second, Horace posits that there is a form of distributive justice, in which, for any crime, there is a scale of relative harm and thus relative punishment. A slave who licks a plate steals, writes Horace, but the degree of theft is small when compared to other forms of theft. Finally, Horace is prepared to adjust his set of principles in order to discount minor "crimes" entirely, as the mark of a virtuous man.

The scaled approach to punishment, in which an attempt is made to find ways of reaching equitable penalties for different crimes, is technical and mechanical, of the kind that leads to formal schedules of punishment such as might be found in Rome's Twelve Tables or as part of Roman statute law. However, Horace is not content to limit himself to these kinds of deliberations about punishment, or in merely recounting the penalties or sanctions that can be imposed by a court. On the contrary, most of the punishments that Horace gives us are not formal punishments rendered by a legal process in a court of law,

but punishments of self-help, e.g. irate husbands who wreak their own vengeance on adulterers and Canidia, who administers her own potions and spells. Rather, as far as Horace is concerned, punishment also has a personal, psychological aspect. The adulterer, for example, experiences fear of detection (even though he may not be detected) that is a form of punishment in itself. The poet's impassioned pleas to Canidia for leniency are also inwardly painful, the pain that comes from the futility of attempting to overturn a harsh penalty (felt acutely, for example, in Ovid's poems from exile). Finally, there are the intangible penalties of crime that touch the Roman's sense of dignity. Loss of reputation and social standing, Horace reminds his readers, are also serious and painful punishments.

---

[1] For a succinct list, see Hunter, pp. 905-913.

[2] Hunter defines the difference (p. 905): "The true distinction between crime and civil wrong is to be found in the remedy that is applicable. The aim of the Civil Law is to give redress to a sufferer, in the form either of restitution or of compensation. The aim of the Criminal Law is punishment." However, since an act may be a civil and a criminal offence (e.g. theft), both the criminal and the civil law may be involved.

[3] Horace refers to the Twelve Tables in Epistles 2.1.23f.

[4] For early Greek written law (literary and inscriptional) see Gagarin, pp. 51-97. Gagarin notes, p. 52, that the earliest written laws date from the middle of the seventh century, the first known recorded laws being "those of Zaleucos for Epizephyrian Locri (in southern Italy)...about 662 BC."

[5] Lucretius may have taken a different view of the Titans' revolt. M. Gale notes, Myth and Poetry in Lucretius (Cambridge, Cambridge University Press, 1994), p. 43: "Lucretius' use of the myth is deliberately aimed to shock, by reversing its traditional moral implications...Here Lucretius responds to potential critics, who might be constrained by the 'bridle' of *religio* to believe that anyone who impiously denies the eternity of the world deserves to be punished like the Giants. The Epicureans are thus associated with the Giants, with the implication that the latter were, in a sense, in the right, and it is only *religio* which prevents us from seeing that 'assault' on the heavens is no sin." Horace, however, intends the Gigantomachia to be seen as an allegory for assaults on the stability and rulers of the Roman state.

[6] Hornsby observes (p. 103) that in Odes 3.4 "the juxtaposition of the giants who warred against the dominion of Jupiter and those who attempted rape suggests that the crimes are

of a similar nature, and the similarity of punishment reflects the same notion...The use of force without *consilium* is common to both, hence both are doomed to be suppressed."
[7] The poet is begging for mercy from the witch Canidia. Canidia uses mythical examples of punishment to show him the futility of protesting against her will: *ingrata misero vita ducenda est in hoc, / novis ut usque suppetas laboribus. / optat quietem Pelopis infidi pater, / egens benignae Tantalus semper dapis, / optat Prometheus obligatus aliti, / optat supremo collocare Sisyphus / in monte saxum; sed vetant leges Iovis* (Epodes 17.63-69).
[8] Barbara Price Wallach, Lucretius and the Diatribe Against the Fear of Death (Leiden, Brill, 1976), p. 88. For Lucretius on punishments in the afterworld and their relationship to Epicurean thought, see Wallach, pp. 81-91, and Gale, p. 93f.
[9] Cf. also Odes 4.7.21-28: *cum semel occideris et de te splendida Minos / fecerit arbitria, / non, Torquate, genus, non te facundia, non te / restituet pietas; / infernis neque enim tenebris Diana pudicum / liberat Hippolytum, / nec Lethaea valet Theseus abrumpere caro / vincula Perithoo.* Fraenkel notes (p. 420) that the central theme of the Ode is death: "The thought [as the poem proceeds] seems to be darkening more and more until the cheerfulness of the beginning has all faded away. The last stanza but one, *cum semel occideris*, offers no consolation, and in the concluding stanza we are told that neither the protection of a goddess nor a hero's friendship could rescue those who had to go down to Hades in the prime of their youth. Death, not Spring, seems now to be the poem's chief theme."
[10] *Audax Iapeti genus / ignem fraude mala gentibus intulit. / post ignem aetheria domo / subductum macies et nova febrium / terris incubuit cohors, / semotique prius tarda necessitas / leti corripuit gradum.*
[11] Nichols, p. 162.
[12] *Grave ne rediret / saeculum Pyrrhae nova monstra questae, / omne cum Proteus pecus egit altos / visere montis, / piscium et summa genus haesit ulmo, / nota quae sedes fuerat columbis, / et superiecto pavidae natarunt / aequore dammae. / vidimus flavum Tiberim, retortis / litore Etrusco violenter undis...* (Odes 1.2.5-14).
[13] A theme of social degeneration retold in more detail in Odes 3.24.
[14] Dunston, discussing the ending of Odes 3.4, wonders (p. 18) whether Horace's use of the mythical punishments (in which we can see, allegorically, the punishments rendered, or which should be rendered by Augustus) shows criticism of Augustus' clemency towards his enemies: "when one ponders the end of the poem, the examples of punishments inflicted by Jupiter on his enemies and upon those who infringed his prerogatives—Gigas, Orion, the Aloadae, Tityus, Perithoos, one is tempted to think that Horace may have had his tongue in his cheek: there were doubtless those in whose eyes the *clementia* of Augustus was just as much of a myth as that of his adoptive father."
[15] Fears, p. 67.
[16] W. H. Alexander notes ("Horace's Odes and *Carmen Saeculare*," University of California Publications in Classical Philology , 13[1947], p. 194) that in this poem "Horace [is] superheated with Roman patriotism throughout this unpleasantly vindictive ode." Quoted by Fraenkel, p. 160.

[17] Fraenkel, p. 161, notes: "Horace's praise of Cleopatra shows that the Rome of Augustus, despite its very different outlook on life, had still some moral ideals in common with the Athens of the Persian wars. It cannot be assumed that all fellow-citizens of either Aeschylus or Horace shared the noble feelings expressed by the poets. But it is a fact, and a very important fact indeed, that the poets, voicing what was in the minds of the best men, could, without fear of disapproval, treat the defeated enemy in such a manner at the moment when a life-and-death struggle had been decided." Commager (pp. 88-97)is less charitable. He observes that Horace's view of Octavian is hardly flattering, reduced to a hunter chasing a rabbit, while Cleopatra is elegized and (p. 92) raised "directly from defeat to noble death."

[18] The husband's adultery was not a crime. A wife's adultery was. However, it was a crime for a man to attempt to seduce a married woman or an unmarried woman of high status. It was not illegal for a man to have liaisons with a prostitute or a woman of low status (e.g. an actress or a shop-keeper). See Hunter, p. 912f. , Crook, p. 101.

[19] Hunter notes (p. 909): "Sodomy was punished under the *lex Julia* with forfeiture of goods." The stable-boys (*calones*) would not be personally responsible. Hunter (p. 23): "But he [i.e. a slave, servant] was exonerated when he acted under the orders of his master, for then he was only an agent of the master, who remained answerable for the whole damage. (D. 44.7.20)." Flogging someone to death, i.e. a form of murder, was punished with deportation and forfeit of property, under the *lex Cornelia de sicariis*. Lesser persons were condemned to death (Hunter, p. 910). However, in cases of adultery a husband who killed his wife's lover was exonerated (provided that the lover was not an important personage, and that the husband divorced his wife immediately). To extort money by blackmail, i.e. with threats that the person had committed a crime, was subject to the *lex Cornelia de falsis*, namely, deportation (Hunter, p. 903). Castration or sexual mutilation was subject to the *lex Cornelia de sicariis*. Robbers were subject to relegation or being sent to the mines (Hunter, p. 911).

[20] For an analysis, see Rudd, pp. 188-201. Rudd makes the point that Horace's later Satires (i.e. in Book 2), have less of the sermonizer about them and more of the comedian. He states (p. 196): " So instead of a sermon the preacher has presented a sort of comic morality-play. But the message is still there."

[21] Note the appropriateness of the punishment: garlic caused the "crime", and now it will be a wished-for part of Maecenas' punishment.

[22] Fraenkel, p. 69.

[23] Mankin, p. 97.

[24] For the identity of Canidia, see Fraenkel, pp. 62ff. Fraenkel notes: "Canidia is certainly not a portrait of one single woman, nor are the three poems in which she appears primarily the result of some actual experience of Horace. The most which any such experience can possibly have done is to lend some additional features to a figure which originated in the realm of fiction."

[25] Hunter, p. 909. Garnsey, p. 109f. The offences were covered by the *lex Cornelia de sicariis*. Garnsey notes that the punishment of death was carried out for acts associated

with the Emperor. For others, deportation or exile were the normal punishments. In 33 B.C., Rudd notes (p. 72), "magicians and astrologers were expelled from Rome on the orders of Agrippa (Dio 49.43.5). In A.D. 16 they had to be ejected once again." See Rudd, pp. 67-74 for an account of Priapus and Canidia and Horace's approach to superstition.

[26] *Cum mihi non tantum furesque feraeque suetae / hunc vexare locum curae sunt atque labori, / quantum carminibus quae versant atque venenis / humanos animos; has nullo perdere possum / nec prohibere modo, simul ac vaga Luna decorum / protulit os, quin ossa legant herbasque nocentis* (Satires 1.8.17-22).

[27] Rudd, p. 72.

[28] The Roman "sin" takes its origins in the fratricide of Romulus, a mythical event that was echoed in fratricidal wars. See H. Wagenvoort, "The Crime of Fratricide," in: Studies in Roman Literature, Culture and Religion (Leiden, Brill, 1956), pp. 169-183. Wagenvoort notes that (p. 183): "For me at least there remains hardly any doubt that Octavian in 27 B.C. refused the title of Romulus partly because that name had too many unfavourable associations and bound him too firmly to the senate party."

[29] Sometimes the reason remains unexplained. In Epodes 10, for example, Horace wishes that Mevius have a bad sea voyage: *Mala soluta navis exit alite, / ferens olentem Mevium*...(v. 1f.). May his bones lie on the seashore for the gulls: *opima quod si praeda curvo litore / porrecta mergos iuverit*...(v. 21f.). What Mevius has done to deserve Horace's curse is left unsaid. However, since the name Mevius is often used in Roman legal documents as the equivalent to John Doe, Horace may be hinting that some lawsuit lies at the bottom of his anger.

[30] See Elizabeth Asmis, "Philodemus' Epicureanism" (Aufstieg und Niedergang der römischen Welt, Band II. 36.4. Berlin, de Gruyer, 1990), pp. 2395-2399, for the differences between the Stoic, Epicurean and Peripatetic approaches to anger. Of Peripateticism (p. 2395): "The Peripatetics believed that it is natural to feel emotion and that there is a mean (*meson*), for all emotions, which is in accordance with reason (*kata ton logon*). According to the Peripatetics, only excesses of emotion are irrational..." Horace does not deny and try to remove anger entirely (like the Stoics), nor try to avoid it completely (like the Epicureans). His emphasis is on restraining anger. For the disastrous outcomes of anger, see Odes 1.16.17-22: *irae Thyesten exitio gravi / stravere et altis urbibus ultimae / stetere causae, cur perirent / funditus imprimeretque muris / hostile aratrum exercitus insolens. / compesce mentem*...Prometheus, Horace states, put anger in the hearts of men (vv. 13-16).

[31] Rudd makes an interesting point (p. 34): "Here the idea implicit in *compenset* and *inclinet* emerges finally in *trutina*. At the same time the form of the image is constantly shifting. The friend first holds the balance, then appears to be identified with the balance, and finally ends up *in* the balance."

[32] For analysis of Aristotle's views of justice, see W. von Leyden's Aristotle on Equality and Justice (London, Macmillan, 1985), as well as Ernest J. Weintrib, "Aristotle's Forms

of Justice" (in: Justice, Law and Method in Plato and Aristotle. Ed. by S. Panagiotou. Edmonton, Academic Printing and Publishing, c1987, pp. 133-152).

[33] See Ducos' "hierarchy of punishments," p. 343-350.

[34] Plutarch, Solon 17.2, cites a similar example in discussing Draco's law, i.e. that the stealing of vegetables and fruits was considered the same as stealing *sacra* or the crime of assassination. Noted by Ducos, p. 344.

[35] Hunter, p. 13. For use of the *crux* as punishment, and later extension to the *humiliores* and traitors, see Garnsey, pp. 126-129.

[36] See Bruce W. Frier, A Casebook on the Roman Law of Delict (Atlanta, American Philological Association, c1989).

[37] Hunter, p. 911.

[38] Hunter, p. 912.

[39] Alberti describes the Epicurean meaning of utility (p. 187f.): "Epicurean justice, then, is a form of utility which is realized by means of a contract, and which, although "really existing", varies in relation to circumstances; consequently, not only is it different in different places and for different individuals, but it changes over time, in relation to the same place and the same individuals, in so far as a particular circumstance changes in time." There is no evidence that Horace viewed justice as a relative thing subject to the push and pull of circumstance. He emphasizes stability and continuity, which are not congruent with utilitarian views.

[40] Galinsky, p. 88f: "The virtues were, in a way, the famous "Augustan constitution." Exemplifying his transforming leadership, they were a statement of principles that the senate and people attributed to him and on which he and they were to act as a part of a new *consensus universorum*. He was the guarantor of these principles; their implementation was not his alone, but needed to be shared by all."

[41] Dunston observes (p. 18) that when Horace cites Jupiter's punishments in Odes 3.4 (i.e. punishments of the Giants) he may be making a criticism of Augustus' *clementia*: "When one ponders the end of the poem...one is tempted to think that Horace may have had his tongue in his cheek: there were doubtless those in whose eyes the *clementia* of Augustus was just as much of a myth as that of his adoptive father." This view assumes that clemency should apply in all situations, even those that concern acts of treason and civil war. Further, it implies that Horace was anti-Augustan, for which there is little direct evidence.

[42] In the Republic appeals could be made against a criminal conviction to the people (*provocatio*) or to a magistrate (*appellatio*). See Hunter, pp. 885ff.

[43] Garnsey, p. 103.

[44] Richard Kraut, Socrates and the State (Princeton, Princeton University Press, c1984), p. 84.

[45] Garnsey, p. 105.

[46] For differences in treatment, see Garnsey, pp. 260-271.

[47] Crook, p. 252. There is a question as to whether defamation was covered by the *lex Cornelia de iniuriis* of Sulla. For discussion, see Coffey, p. 231.

[48]Hunter, p. 910f. Opinions differ on Augustus' approach to oral and written attacks on his person and family. Crook (p. 252) refers to Tacitus as a source of an incident where political satire was treated as treason (*maiestas*). For a discussion of Augustus, his proponents and opponents, see K. A. Raaflaub and L. J. Samons, "Opposition to Augustus" (in: Between Republic and Empire: Interpretations of Augustus and his Principate. Ed. by Kurt A. Raaflaub and Mark Toher. Berkeley, University of California Press, c1990, pp. 417-454). Suetonius (Divi Augusti Vita 35.2) recalls Augustus' tolerance: *etiam sparsos de se in curia famosos libellos nec expavit et magna cura redarguit ac ne requisitis quidem auctoribus id modo censuit, cognoscendum posthac de iis, qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine edant.*

[49] Bauman, Lawyers, pp. 123-136.

[50] Hart (p. 25): "The guiding principle is that of a proportion within a system of penalties between those imposed for different offences where these have a distinct place in a commonsense scale of gravity. This scale itself no doubt consists of very broad judgements both of relative moral iniquity and harmfulness of different types of offence."

CHAPTER 5

CONCLUSIONS: HORACE AND JUSTICE

What broad conclusions can be made about Horace's attitudes to the justice of crime and punishment? At the head of our remarks must be that Horace viewed justice as something that must apply to all aspects of the state and to all aspects of the law and its practical implementation. The portrait of justice that emerges from Horace's works is essentially the justice of a legal system that maintains order within the Roman state and Roman society. For Horace, in its origins law draws its authority ultimately from the gods, who provide it with its moral direction and also empower Rome's rulers to give it force and effect. Whether myth or not, whether Romans believed it all or not, Horace uses the accoutrements of divine backing to add legitimacy to the regime and its laws. And since the gods are the ultimate repository of morality, their support and guidance implies that Rome's ruler, Augustus, is also moral and just.

An underlying purpose of such a system of law and justice is, in Horace's mind, to protect Rome from its fratricidal past and from blood-guilt which began with Romulus and Remus and which continued throughout the years down to the violent end of the Republic. The lessons of this kind of destructiveness, he writes, may be seen in the discord of Troy, which fell from the folly of its rulers:

> *Fabula, qua Paridis propter narratur amorem*
> *Graecia Barbariae lento collisa duello,*
> *stultorum regum et populorum continet aestus.*

...
quidquid delirant reges plectuntur Achivi.

Seditione, dolis, scelere atque libidine et ira
Iliacos intra muros peccatur et extra.

(Epistles 1.2.6-8, 14-16)

The rulers (of Troy, but also of the Greeks) failed to create and maintain peace and concord.[1] It was because of this that Juno offered success and victory to the Romans, but only if they avoided the land of Ilium (Odes 3.3.57-60),[2] a statement that refers not so much to the geographical location as to the kinds of things that had happened there. Law is clearly an essential component of concord. How great was the danger of renewed civil strife? Horace had little faith in his generation of Romans, a generation which he considered worse than those that preceded it.[3] In principle, strife could start from some small thing. Failure to find concord could have disastrous implications for future generations. If the bones of the dead (perhaps an allegory for the deeds of the past) are not buried properly, then trouble may follow: *neglegis immeritis nocituram / postmodo te natis fraudem committere? Fors et / debita iura vicesque superbae / te maneant ipsum* (Odes 1.28.30-33).[4] A strong hand was needed to enforce law and order and to reorganize society. For Horace, Augustus had that hand and he urged him to use it. Wallace-Hadrill observes:

> Augustus took on himself the rôle of restoring order after the political confusions of the previous decades. The restoration of order to the family was felt to be a necessary part of the re-establishment of political order. Horace is explicit about the link. It is in order to terminate civil confusion and mutual slaughter that Augustus is urged to undertake sexual reforms.[5]

Horace's view of the need for a just ruler supported and authorized by the gods as an answer to Rome's troubled past is the capstone of his thoughts on justice and the law. As a statement, however, it appears relatively late in his writings, and is expressed most forcefully in the Odes, and particularly in the cycle of the Roman Odes (Odes 3.1-6), a collection of poems that contains many of Horace's most direct comments on Rome's political status. Not that this late attention is surprising. It would be pressing the issue too hard to expect the poet to comment loudly during the triumvirate of Octavian, Anthony and Lepidus on the desirability of Rome being governed by one strong Roman leader. Christopher Pelling describes Horace's delicate positioning as a poet during the life of the triumvirate:

> Octavian anyway knew better than to bludgeon the cultured too crudely. "Propaganda" is too crass a word to apply to the literary production of his followers. Horace, for instance, was hardly disloyal. When he was writing an Epode, the tone would be appropriately Archilochean and abusive. But he was also writing his Satires, where Lucilius had set the generic pattern of personal attack and derision; yet, very self-consciously, Horace turned away from the tradition, dwelling instead on the delicate portrayal of his life and values, especially the value of friendship. Remarkably, Anthony and Cleopatra escape attack: Horace's personalia are different, warmer and more intimate. If Octavian is in the background, the suggestions are gentle ones: these are his friends, and this is how they live.[6]

Family life, values and friendship. The difficulties of the triumvirate period, however, are not entirely absent and the Satires and Epodes are strongly coloured with decay of social life and morality. The tone is set, albeit indirectly, in Satires 1.1. Here, Horace recounts in turn how the soldier envies the pursuits of the trader (*o fortunati mercatores! Gravis annis / miles ait*, v. 4f.), while the trader looks enviously on the soldier's life of death or

glory. Meanwhile, the man schooled in the law envies the life of the farmer, while the country dweller who is dragged to court praises city life.[7] The immediate theme is envy, but at a deeper level we can see a reflection perhaps of personal discontent, social unrest and disruption, the psychological disconnection from routine life that stemmed from civil war. Traders, farmers, lawyers, soldiers—the lack of certainty affects four supporting pillars of the Roman state. And from envy flow the dangers to Roman life of *avaritia*.[8] During these early years, after Philippi, Horace could not have been at all optimistic nor could he even look forward to the emergence of a powerful figure such as Augustus who was able and willing to undertake social and legal reforms. It was hardly possible for him to predict the outcome of the triumvirate (and Horace had already chosen unwisely in supporting the "wrong" side). The political balance remained unpredictable until the outcome of Actium and it could have been dangerous for Horace to voice his preferences publicly. As a result, Horace's Satires and Epodes are discreetly non-political,[9] while at the same time paying attention to social issues that almost cry out for strong leadership, social reform and legal solutions. Most of what Horace has to say about Octavian/Augustus' position and his relationship to divine authority, however, does not find expression until the Odes, Epistles and Carmen Saeculare.

We have encountered Horace's views on the need for a strong, morally-minded leader (ultimately to be found in the person of Augustus) who provided the Roman state with an appropriate framework of power and moral direction. Only within such an over-arching structure of the state, Horace implies, is it possible to garner social consensus and to support a legal system that is just. Consistent with this view is Horace's approach to

the foremost practitioners of the law, namely, judges and lawyers, who are at the centre of the court system, and members of the legal community, like Trebatius, who advise ordinary Romans. Here are figures much respected by the poet, like Lollius and Regulus, whose most important qualities are those of being virtuous, just men (*vir bonus, fidus, iustus*).

Horace puts emphasis on the moral underpinnings of the Roman legal system and the judges and lawyers who implement it on a daily basis. But he does not stop there. Even sound moral values need guidance and practical advice. The art of judging is of special importance, since it is here, in the heart of the application of the law, that the essence of justice must reside. To ascertain guilt and innocence and to determine the proper proportion of individual responsibility are tasks that a judge can provide, but he must be aware of certain facts and techniques for arriving at the truth.

The techniques that Horace offers are simple by modern standards, more designed to determine character and morality (good points and flaws) than evidence. The poet is notably silent about such legal issues as determining the facts of a case and says little about the evidence of witnesses (the poet is summoned by the "bore" to go to court in Satires 1.9, but this is a unique example). The lessons that Horace provides do, however, make some useful points. For example, he notes that a person who judges someone else should be aware of his own prejudices and biases (the context is that of judging a friend, but the principle is equally applicable at law). And there is much common sense in his observations that a judge must be sensible to the fact that appearances can be deceiving. He points too to the idea that Nature plays a part in how things are and how they appear--

not everything is perfect. The implications of the thought are far ranging but unfortunately Horace does not delve into the subject further: if Nature fashions flaws in people (and those flaws of character or morality lead to crime) then what does this say for accountability for one's actions? A person may be responsible for a crime, yet not accountable for it. Horace comes close to this subject when he considers the mental condition of those who commit crimes. Having discounted the Stoic contention that everybody is mad (except the sage), Horace carefully distinguishes between different forms of madness, catalogued in detail in Satires 2.3. He brings us the madness of folly (*stultitia*), manifested in the pursuit of wealth, luxury or pleasure; the madness of anger (*ira*), perhaps quickly cooled, but perhaps hot enough too to lead to all sorts of calamities (*ludus enim genuit trepidum certamen et iram, / ira truces inimicitias et funebre bellum*, Epistles 1.19.48-49);[10] madness brought on by (what we would term) extreme stress (e.g. Ajax), and, finally, the cold-minded madness of a man (such as Agamemnon) who uses reason and logic to justify his actions. All these mental conditions are demonstrably different in their origins, severity and effects, and Horace clearly saw their relevance when determining culpability. Madness could be a reason to acquit someone (although he could still be condemned for the crime, at least in Stoic thinking, in that crime and madness were almost synonyms, *cognata vocabula*).[11]

The techniques presented by Horace address the need for an approach to the judgement of criminal deeds or behaviour that provides the possibility of reaching a just result. Only if a judge is able to determine the facts of a case in a reasonable way, Horace implies, can his determinations of guilt and responsibility conform to a sense of justice. As

we have seen, the judgement of crime involves a set of tests that consider both the person who makes a judgement and the person who is judged. This is only the first part of the matter. For a legal system to be just also signifies that any punishment that is awarded is fair and just. How can such a result be obtained? Central to Horace's concept of just punishment is the observation that "the punishment should fit the crime." Such an approach seeks to find a middle course between the utilitarian ideas of the Epicureans and the extreme position of the Stoics, who held all crimes (and thus all punishments) equal. While the approach reflects popular notions of people getting what they "deserve", as a principle of justice it is a difficult concept to apply in practice and was the subject of much analysis by both Greek and Roman philosophers. One of the primary problems is to develop a relative hierarchy of crimes in a way that orders them on the basis of severity or other criterion that answers the needs of society. Murder, for example, is clearly more serious than theft, but how much more serious? In Roman terms, is the murder of a slave more or less than or equal to the murder of a freedman, citizen or peregrine?[12] What weight should be given to extenuating circumstances (such as acting in self-defence, or from insanity)? Having established the sequence of crimes, it is then necessary to outline the penalties that apply. As examples multiply and become more case-specific, it is increasingly difficult (and ultimately impossible)[13] to create a ladder of punishments that captures all the nuances of criminal acts.

Horace, of course, does not pursue all the implications of finding a system of punishment that is just because it is in some way *aequum* to the range of crimes. Such an approach would be an assault on the full range of penalties for crimes codified in the

Twelve Tables and the few handfuls of statutes in force at the beginning of the Augustan period. Horace, as we have seen, makes it clear that certain punishments of Roman law are entirely acceptable, particularly those that pertain to crimes against the Roman state, its leader, and serious crimes *in personam*, such as murder, rape and adultery. Indeed, he presses for more laws against what he saw as the socially disruptive crime of licentiousness and adultery. His comments for the most part apply [a] to considerations that there should be more flexibility in assigning punishment, [b] that lesser, trivial crimes should not be pursued, and [c] that slaves should be treated more fairly. In sum, for Horace, punishment serves its main purpose as an act of retribution or revenge (divine or human),[14] of payment for crime committed, and from there it does duty as a warning to others. There is no sense, as there is, for example, in Socrates, that punishment is related to the education of the criminal, no mention of rehabilitation.

Finally, Horace placed great emphasis on the moral sense of the Romans. No legal system can suffice, if citizens do not willingly adhere to it. Cicero, for example, went to great lengths to analyze what Regulus could or should have done (De Officiis 3.27.99-31.112). Horace repeats the story, but for the poet it was much simpler than all the arguments of Cicero: for him, Regulus leaves to accept his punishment (death) as if it is no more than leaving the court after a difficult trial and leaving for a holiday:

> *aiqui sciebat quae sibi barbarus*
> *tortor pararet; non aliter tamen*
> *dimovit obstantis propinquos*
> *et populum reditus morantem*
>
> *quam si clientum longa negotia*
> *diiudicata lite relinqueret,*

tendens Venafranos in agros
aut Lacedaemonium Tarentum.

(Odes 3.5.49-56)

Regulus returns to Carthage because it is the right thing, the moral thing, the just thing to do, in the same way that Socrates rejects taking advantage of Crito's escape plan.[15] On a lesser note, Horace can suggest to the aging wife of Ibycus (Odes 3.15) that it is not right (*non...te, Chlori, decet...non citharae decent / nec flos purpureus rosae / nec poti vetulam faece tenus cadi,* vv. 8, 14-16) to play the games of young girls. The lesson is one of what is appropriate to age, but not far from the surface is the (unspoken) threat of adultery and the danger that she could run afoul of the law. It is a question of morality and legality. Horace would have Chloris avoid crime by pointing out something which is inappropriate by nature.

It is impossible to know whether (or perhaps we should say to what extent) Horace's thoughts on crime and punishment had any impact on the development of Augustus' legislative program. Much of what Horace writes on the subject, including his comments on the ills of Roman society and his discussions of judgement, crime and punishment, belongs to the Satires and Epodes, which appeared in the decade before Augustus assumed power. We know, however, that Horace was known to Augustus' circle through his patron, Maecenas. Augustus was pleased enough with Horace, who had the courage to write about Roman society,[16] to ask him to write about him.[17] It is reasonable to suppose, then, that Augustus was familiar with Horace's views. More than this, Augustus was intensely interested in justice[18] and made it a cornerstone of his

policies.[19] Perhaps Horace, a man of Augustus' own age and generation, a generation that "yearned for peace, stability, and a restoration of basic Roman values,"[20] played some part in the development of the *Iustitia Augusta*. Poetry had that power and past experience, even before Homer:

> *Silvestris homines sacer interpresque deorum*
> *caedibus et victu foedo deterruit Orpheus,*
> *dictus ob hoc lenire tigris rabidosque leones;*
> *dictus et Amphion, Thebanae conditor urbis,*
> *saxa movere sono testudinis et prece blanda*
> *ducere quo vellet. Fuit haec sapientia quondam,*
> *publica privatis secernere, sacra profanis,*
> *concubitu prohibere vago, dare iura maritis,*
> *oppida moliri, leges incidere ligno.*
> *Sic honor et nomen divinis vatibus atque*
> *carminibus venit.*
>
> (Ars Poetica 391-401)

---

[1] Francis Cairns, "Concord in the Aeneid of Virgil" (Klio 67[85], pp. 210-215). Cairns notes (p. 211): "It is because of the link between kings and *concordia* that in his account of the Iliad Horace stressed the failure of the kings to do their duty and to create Concord." A. D. Castro, Tacitus and the "Virtues" of the Roman Emperor (Unpub. Ph.D. Thesis. Indiana, Indiana University, 1972), observes (p. 26): "*Concordia* was one of the oldest of the "virtues" in Roman political life. Its cult traditionally began in 367 B. C. when the first temple to *Concordia* was consecrated to mark the return of harmony to the state following the end of one phase of the struggle between the *patres* and the *plebes*. During the succeeding centuries it was often appealed to in times of internal crisis or in the face of external dangers which demanded a united domestic front." A major monument in honour of *concordia* was dedicated by Livia and Tiberius in the Porticus Liviae. The Concordia Augusta dates from 10 A. D. (Castro. P. 64). For an account of the monument in the Porticus Liviae, see Paul Zanker, The Power of Images in the Age of Augustus (Tr. by Alan Shapiro. Ann Arbor, University of Michigan Press, c1988), p. 138f.

[2] *Sed bellicosis fata Quiritibus / hac lege dico, ne nimium pii / rebusque fidentes avitae / tecta velint reparare Troiae.*

[3] Cf. Odes 3.6.13-20: *Paene occupatam seditionibus / delevit urbem Dacus et Aethiops, / hic classe formidatus, ille / missilibus melior sagittis. / fecunda culpae saecula nuptias / primum inquinavere et genus et domos; / hoc fonte derivata clades / in patriam*

populumque fluxit., and (vv. 45-48): *damnosa quid non imminuit dies? / aetas parentum, peior avis, tulit / nos nequiores, mox daturos / progeniem vitiosiorem.*

[4] The thought is full of associations linked to the problems caused by the failure to bury the dead. We think immediately of Antigone's attempted burial of her brother and the disastrous results. Or, again, we recall the lack of closure that can occur until Achilles allows Hector's corpse to be returned to Priam for burial.

[5] Andrew Wallace-Hadrill, "Propaganda and Dissent? Augustan Moral Legislation and the Love-Poets" (Klio 67[1985]), p. 183. Catharine Edwards, in her study, The Politics of Immorality in Ancient Rome (Cambridge, Cambridge University Press, c1993), p. 36, observes that social decay led to the civil war at the end of the Republic and, in the view of Roman moralists, society had to be attended to before Rome could return to stability.

[6] CAH p. 45.

[7] *Agricolam laudat iuris legumque peritus, / sub galli cantum consultor ubi ostia pulsat. / ille, datis vadibus qui rure extractus in urbem est, / solos felices viventis clamat in urbe* (vv. 9-12).

[8] Fraenkel, pp. 90-97.

[9] Commager, p. 160, notes: "After the Republican defeat at Philippi in 42 B.C., Horace seems to have retreated from further political commitments. The Satires studiously avoid political subjects, treating public events only as a background to Horace's private life."

[10] In Odes 1.16 Horace traces man's sense of anger to Prometheus, who placed it in man's belly: *fertur Prometheus addere principi / limo coactus particulam undique / desectam et insani leonis / vim stomacho apposuisse nostro* (vv. 13-16).

[11] Horace links the two situations in Satires 2.3.277-280: *Hellade percussa Marius cum praecipitat se / cerritus fuit, an commotae crimine mentis / absolves hominem et sceleris damnabis eundem, / ex more imponens cognata vocabula rebus?*

[12] Hart, p. 161, quotes from Sir Wm. Blackstone (Commentaries on the Laws of England [note: originally published at Oxford, Clarendon, 1765-69], Book IV, ch. 1, II.3) on the problem of thinking that an obvious penalty is appropriate (such as execution for murder): "the execution of a needy decrepit assassin is a poor satisfaction for the murder of a nobleman in the bloom of his youth, and full enjoyment of his friends, his honours and his fortune."

[13] For an analysis of the principle of punishment fitting the crime, see Hart, pp. 161-173. Quoting from Blackstone (Commentaries, Book IV, ch. I, II.3), Hart points (p. 161) to a basic absurdity of the thought: "There are very many crimes, that will in no shape admit of these penalties, without manifest absurdity and wickedness. Theft cannot be punished by theft, defamation by defamation, forgery by forgery, adultery by adultery."

[14] Henderson, p. 82f.

[15] For analysis of Socrates' refusal to disobey the law, even when there was good reason to do so, see, for example, A. D. Woozley, Law and Obedience: The Arguments of Plato's *Crito* (London, Duckworth, 1979).

[16] Williams, p. 169: "He was the only poet known to us who treated the factual content of Roman politics...He dealt with actual legislation."

[17] Suetonius, Vita Horatii. For an analysis of the literary relationship of Horace to Augustus, see Peter White, Promised Verse: Poets in the Society of Augustan Rome (Cambridge, Harvard University Press, 1993), pp. 96-208 *passim*.
[18] Castro, p. 32: "Although the concept of *iustitia* as a "virtue" has philosophical antecedents in Stoic thought, its cult at Rome does not seem to have begun before the reign of Augustus."
[19] Galinsky notes, p. 85: "Justice, therefore, is the cardinal virtue from Plato to Cicero and could not possibly be left out...Augustus' agreement with the Senate signaled the return to a government based on justice and just laws rather than the continuation of his rule in a manner of a triumvir. Legality had not been absent from Octavian's actions and rise to power...But just as Augustus transcended Octavian, justice transcended mere legality."
[20] Galinsky, p. 226.

BIBLIOGRAPHY

Texts of Horace and Commentaries

Quintus Horatius Flaccus. Opera. Ed. by E. C. Wickham. 2d ed. Oxford, Clarendon, 1901.

_____. Opera. Ed. by F. Klingner, Lipsiae, Teubner, 1959.

_____. Horace: Epodes. Ed. by D. Mankin. Cambridge, Cambridge University Press, 1994.

_____. The Epistles of Horace. Ed. by A. S. Wilkins. London, MacMillan, 1929.

_____. Horace: Epistles: Book 1. Ed. by R. S. Mayer. Cambridge, Cambridge University Press, 1994.

_____. Horace: Odes and Epodes. Ed. by Paul Shorey. Rev. ed. New York, Sanborn, c1910.

_____. Horace: The Odes and Epodes. With tr. by C. E. Bennett. Rev. ed. Cambridge, Harvard University Press, 1988.

_____. Horace: The Satires. Ed. by E. P. Morris. New York, American Book Company, c1909.

_____. Horace: Satires, Epistles and Ars Poetica. With tr. by H. R. Fairclough. Rev. ed. Cambridge Uniiversity Press, 1929.

Secondary Sources

Alberti, Antonina. "The Epicurean Theory of Law and Justice", in: Justice and Generosity. Ed. by A. Laks. Cambridge, Cambridge University Press, 1995, pp. 161-190.

Ambrose, John W. "The Ironic Meaning of the Lollius Ode," Transactions of the American Philological Association 96 (1965), pp. 1-10.

Arieti, James. "Horatian Philosophy and the Regulus Ode (Odes 3.5)," Transactions of the American Philological Association 120 (1990), pp. 209-220.

Armstrong, Arthur Hilary. An Introduction to Ancient Philosophy. s.l., Littlefield Adams, 1979.

Asmis, Elizabeth. "Philodemus' Epicureanism," Aufstieg und Niedergang der römischen Welt. Berlin, de Gruyter, 1990. Band II. 36.4, pp. 2369-2406.

Bailey, D. R. Shackleton. Profile of Horace. Cambridge, Harvard University Press, 1982.

Bauman, Richard A. Lawyers and Politics in the Early Roman Empire. Munich, C. H. Beck, 1989.

--------. Lawyers in Roman Transitional Politics. Munich, C. H. Beck, 1985.

Brink, C. O. Horace on Poetry: Prolegomena to the Literary Epistles. Cambridge, Cambridge University Press, 1968.

Brunt, P. A. "Stoicism and the Principate," Papers of the British School at Rome. 43 (1975), pp. 7-35.

Cairns, Francis. "Concord in the Aeneid of Virgil," Klio 67 (1985), pp. 210-215.

The Cambridge Ancient History. V. 10: The Augustan Empire, 43 B.C.-A.D. 69. 2d. ed. Ed. by A. K. Bowman, et al. Cambridge, Cambridge University Press, 1996.

Castro, Albert Dwight. Tacitus and the "Virtues" of the Roman Emperor: The Role of Imperial Propaganda in the Historiography of Tacitus. Unpub. Ph.D. Thesis. Indiana, Indiana University, 1972.

Clarke, M. L. The Roman Mind: Studies in the History of Thought from Cicero to Marcus Aurelius. Cambridge, Mass., Harvard University Press, 1960.

Cloud, J. Duncan. "Satirists and the Law," in: Satire and Society in Ancient Rome. Ed. by Susan H. Braund. Exeter, University of Exeter, 1989, pp. 49-67.

Coffey, Michael. Roman Satire. 2d. ed. Bristol. Bristol Classical Press, c1989.

Cohen, David. Law, Violence and Community in Classical Athens. Cambridge, Cambridge University Press, 1995.

Commager, Steele. The Odes of Horace. Bloomington, Indiana University Press, 1967.

Connor, P. J. "The Balance Sheet: Considerations of the Second Roman Ode," Hermes 100 (1972), pp. 241-248.

Crook, John. Law and Life of Rome. Ithaca, Cornell University Press, 1967.

--------. Consilium Principis: Imperial Councils from Augustus to Diocletian. Cambridge, Cambridge University Press, 1955.

D'Alton, J. F. Horace and His Age. London, Longmans, 1917.

Des Bouvrie, Synnove. "Augustus' Legislation on Morals—Which Morals and What Aims?" Symbolae Osloensis 59 (1984), pp. 93-113.

Ducos, Michele. Les Romains et la Loi. Paris, Les Belles Lettres, 1984.

Dunston, A. J. "Horace—Odes III.4 and the '*Virtutes*' of Augustus," Australasian Universities Modern Language Association 31 (1969), pp. 9-19.

Fears, J. Rufus. "Jupiter and Roman Imperial Ideology," Aufstieg und Niedergang der römischen Welt. Berlin, de Gruyter, 1981. Band II, 17.1, pp. 3-141.

Ferguson, John. "Epicureanism under the Roman Empire," Aufstieg und Niedergang der römischen Welt. Berlin, de Gruyter, 1990. Band II, 36.4, pp. 2257-2327.

Ferrary, Jean-Louis. "Statesman and law in Cicero's political philosophy", in: Justice and Generosity. Ed. by A. Laks. Cambridge, Cambridge University Press, pp. 48-73.

Flory, Stewart. The Archaic Smile of Herodotus. Detroit, Wayne State University Press, 1987.

Fraenkel, Eduard. Horace. Oxford, Clarendon Press, 1957.

Gagarin, Michael. Early Greek Law. Berkeley, University of California Press, c1986.

Gale, Monica. Myth and Poetry in Lucretius. Cambridge, Cambridge University Press, 1994.

Galinsky, Karl. Augustan Culture. Princeton, Princeton University Press, c1996.

--------. "Augustus' Legislation on Morals and Marriage," Philologus 125 (1981), pp. 126-144.

Garnsey, Peter. Social Status and Legal Privilege in the Roman Empire. Oxford, Clarendon, 1970.

Gellius, Aulus. Noctes Atticae. Tr. by P. K. Marshall. 2v. Oxford, Clarendon Press, 1968.

Gruen, E. S. "Augustus and the Ideology of War and Peace," in: The Age of Augustus: Interdisciplinary Conference held at Brown University, April 30-May 2, 1982. Proceedings. Ed. by R. Winkes. Providence, Brown University, 1985, pp. 51-72.

Hart, H. L. A. Punishment and Responsibility: Essays in the Philosophy of Law. Oxford, Clarendon, c1968.

Havelock, Eric A. The Greek Concept of Justice. Cambridge, Harvard University Press, 1978.

Henderson, W. J. "Political and Legal Imagery in Horace's Odes," in: Pro Munere Grates. Studies presented to H. L. Gonin. Ed. by D. M. Kriel. Pretoria, University of Pretoria, 1971, pp. 73-90.

Highbarger, Ernest Leslie. "The Pindaric Style of Horace," Transactions of the American Philological Association 66 (1935), pp. 222-255.

Hornsby, Roger A. "Horace on Art and Politics (Odes 3.4)," Classical Journal 58 (1962-63), pp. 97-104.

Hunter, William A. A Systematic and Historical Exposition of the Roman Law. Holmes Beach, Fla., Gaunt, 1994. Reprint of 1876 ed.

Jones, J. Walter. The Law and Legal Theory of the Greeks. Oxford, Clarendon, 1956.

Kajanto, Iiro. "Fortuna," Aufstieg und Niedergang der römischen Welt Band II. 17.1. Berlin, 1981, pp. 502-558.

Kenney, E. J. "Ovid and the Law," Yale Classical Studies 21(1969), pp. 243-263.

Kilpatrick, Ross S. The Poetry of Friendship: Horace, Epistles I. Edmonton, University of Alberta Press, 1986.

--------. The Poetry of Criticism: Horace, Epistles II and *Ars Poetica*. Edmonton, University of Alberta Press, c1990.

Kunkel, Wolfgang. An Introduction to Roman Legal and Constitutional History. Tr. by J. M. Kelly. Oxford, Clarendon Press, 1966.

Leyden, W. von. Aristotle on Equality and Justice. London, MacMillan, 1985.

Lintott, A. W. Violence in Republican Rome. Oxford, Clarendon Press, 1968.

Lucretius. De Rerum Natura. Ed. by C. Bailey. 2d ed. Oxford, Oxford University Press, 1922.

MacCormack, Geoffrey. "The Liability of the Judge in the Republic and Principate," Aufstieg und Niedergang der römischen Welt Berlin, de Gruyter, 1982. Band II. 14, pp. 3-28.

Mansfield, Jaap. "Aspects of Epicurean Theology," Mnemosyne 46 (1993), pp. 172-210.

Mayer, Roland S. "Horace's *Moyen de Parvenir*," in: Homage to Horace: A Bimillenary Celebration. Ed. by S. J. Harrison. Oxford, Clarendon Press, 1995, pp. 270-295.

Motto, Anna Lydia. "Stoic Elements in the Satires of Horace," in: Classical, Mediaeval and Renaissance Studies in Honour of B. L. Ullman. Ed. by C. Henderson. Rome, 1964, pp. 133-141.

Muecke, Frances. "Law, Rhetoric, and Genre in Horace, Satires 2.1," in: Homage to Horace: A Bimillenary Celebration. Edited by S. J. Harrison. Oxford, Clarendon, 1995, pp. 203-218.

Nichols, James H., Jr. Epicurean Political Philosophy. Ithaca, Cornell University Press, 1976.

Parry, Richard D. Plato's Craft of Justice. Albany, State University of New York Press, c1996.

Pasquali, Giorgio. Orazio Lirico. Firenze, Monnier, 1966.

Perret, Jacques. Horace. Tr. by B. Humez. New York, New York University Press, 1964.

Putnam, Michael C. J. Artifices of Eternity: Horace's Fourth Book of Odes. Ithaca, Cornell University Press, c1986.

Raditsa, Leo Ferraro. "Augustus' Legislation Concerning Marriage, Procreation, Love Affairs and Adultery," Aufstieg und Niedergang der römischen Welt. Berlin, de Gruyter, 1972. Band II. 13, pp. 278-339.

Ramage, Edwin S. The Nature and Purpose of Augustus' *Res Gestae*. Stuttgart, Historia, Einzelschriften, 1987.

Ricken, Friedo. Philosophy of the Ancients. Tr. by E. Watkins. Notre Dame, Indiana, Notre Dame University Press, c1991.

Robinson, O. F. The Sources of Roman Law: Problems and Methods for Ancient Historians. London, Routledge, 1997.

Rudd, Niall. The Satires of Horace. Cambridge, Cambridge University Press, 1966.

Russell, Bertrand. A History of Western Philosophy. London, Unwin, 1984.

Santirocco, M. S. "The Two Voices of Horace: Odes 3.1-15," in: The Age of Augustus. Interdisciplinary Conference held at Brown University April 30-May 2, 1982. Proceedings. Ed. by R. Winkes. Providence, Brown University, 1985, pp. 9-28.

Schulz, Fritz. History of Roman Legal Science. Oxford, Clarendon Press, 1967.

Seager, Robin. "Horace and Augustus: Poetry and Policy," in: Horace 2000: A Celebration. Ed. by Niall Rudd. Ann Arbor, University of Michigan Press, c1993, pp. 23-40.

Shiner, Roger A. "Aristotle's Theory of Equity," in: Justice, Law and Method in Plato and Aristotle. Ed. by Spiro Panagiotou. Edmonton, Academic Printing and Publishing, c1987, pp. 173-187.

Silk, Edmund T. "Towards a fresh interpretation of Horace Carm. III.I," Yale Classical Studies 23 (1973), pp. 131-145.

Tellegen-Couperus, Olga. A Short History of Roman Law. New York, Routledge, 1993.

Thomson, George. Aeschylus and Athens. 4th ed. London, Lawrence & Wishart, 1973.

Treston, Hubert J. Poine: A Study in Ancient Greek Blood-Vengeance. New York, Longmans, 1923.

Wagenvoort, Hendrik. "The Crime of Fratricide," in: Studies in Roman Literature, Culture and Religion. Leiden, Brill, 1956, pp. 169-183.

Wallace-Hadrill, Andrew. "Propaganda and Dissent? Augustan Moral Legislation and the Love-Poets," Klio 67 (1985), pp. 180-184.

Wallach, Barbara Price. Lucretius and the Diatribe Against the Fear of Death. Leiden, Brill, 1976.

Watson, Alan. The Spirit of Roman Law. Athens, University of Georgia Press, c1995.

Wesselschmidt, Quentin F. Stoicism in the Odes of Horace. Unpublished Ph.D. thesis. Iowa City, University of Iowa, 1979.

White, Peter. Promised Verse: Poets in the Society of Augustan Rome. Cambridge, Harvard University Press, 1993.

Williams, Gordon. Tradition and Originality in Roman Poetry. Oxford, Clarendon Press, 1968.

Witke, Charles. Horace's Roman Odes. London, Brill, 1983.

Woodman, Tony and West, David, eds. Poetry and Politics in the Age of Augustus. Cambridge, Cambridge University Press, 1984.